International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, Local 601 (Papco, Inc.) *and* James L. Brown, Jr.
Cases 11–CB–1772 and 11–CB–1793

June 10, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On June 28, 1991, Administrative Law Judge Robert G. Romano issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this case to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions, to modify his remedy, and to adopt the recommended Order as modified.

We adopt the judge's finding that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by failing and refusing to refer the Charging Party, James L. Brown, Jr., to employment with Papco, Incorporated (the Employer) on April 3, 1989. Contrary to the judge, however, we do not find that Brown is entitled to full backpay here. The record shows that the Employer, pursuant to its contractual right, definitively informed the Respondent in mid-April 1989 that it would not employ Brown. As explained below, we terminate the Respondent's backpay obligation as of that time, when it became clear that Brown's referral to the Employer would be an act of futility.

Brown is a member of the Respondent and has sought employment through its hiring hall for many years. On September 30, 1985, the Board issued a decision[2] finding, as relevant here, that the Respondent violated Section 8(b)(1)(A) by the conduct of its business agent, Herman McMahan, in refusing to refer Brown for employment with Papco because of Brown's internal union activities. Thereafter, McMahan's former brother-in-law, Johnny Phillips, became the Respondent's business manager. Despite Brown's repeated and explicit objections, Phillips maintained on the Respondent's bulletin board the remedial notice from Brown's earlier case for well over a year beyond the normal 60-day posting period ordered by the Board. The judge found that Phillips did this so that Brown's fellow union members would be aware that Brown had taken legal action against the Respondent.

In 1989,[3] the International Union appointed Billy Joe Walker to serve as the Respondent's administrator because of purported financial irregularities. After assuming control of the Respondent, Walker terminated Phillips and all the Respondent's officers on March 20. Based on Walker's testimony, the judge found that Walker kept Phillips on the payroll for a week or 10 days beyond March 20 to ensure a smooth transition in leadership.

On March 30, the Employer and the Respondent signed a project agreement covering the Employer's work on a papermill in Georgetown, South Carolina. It appears that this was the Employer's first project within the Respondent's territorial jurisdiction since McMahan's 1984 refusal to refer Brown for employment with the Employer, a refusal that the Board in the prior case found was discriminatory.[4] The Employer immediately requested that Phillips, whom the judge found was still on the Respondent's payroll, serve as its foreman on the Georgetown project.

Later on March 30, Phillips told Walker that he ''better'' review Brown's office file before referring him for work with the Employer. When Walker asked if there was a problem, Phillips said that the Employer had designated Brown as ineligible for rehire and that Walker would create ''big problems'' if he attempted to refer Brown for work. Phillips did not inform Walker about the Board's finding in 1985 that the Respondent had discriminatorily failed to refer Brown to the Employer. Acting on Phillips' information, Walker then reviewed the file that the Respondent kept on Brown and found a letter from the Employer, dated December 22, 1984, stating that Brown was ineligible for rehire because of an incident that had occurred in 1975.[5] That December 1984 letter, however, had resulted from McMahan's earlier discriminatorily motivated contact of a Papco official and did not serve as

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] *Iron Workers Local 601 (Papco, Inc.)*, 276 NLRB 1273.

[3] All dates hereafter are in 1989, unless otherwise noted.

[4] The Employer's Georgetown project represented a major employment opportunity for the Respondent's members because at the time there was only one union employer which had an ongoing project in the Charleston area.

[5] The record shows that in 1975 the Employer terminated Brown for fighting with a supervisor during a party at the supervisor's home. The Employer then informed the Union that it would not rehire Brown. Nevertheless, the Employer subsequently reemployed Brown from November 14 until December 18, 1978, when there was a reduction in force causing his layoff. Brown again worked for the Employer, this time as a foreman, from November 19, 1979, until he was laid off on April 10, 1980. It was McMahan, acting on the Respondent's behalf, who the Board essentially found in the prior case illegally refreshed the Employer's recollection of its 1975 ban on Brown's hire and discriminatorily prevented Brown's referral to the Employer in 1984. However, based on statements the Employer made to it, the Respondent claims that the Employer never lifted its ban and that Brown's reemployment by the Employer subsequent to 1975 had been a mistake.

a defense in the earlier Board decision to the Respondent's discriminatory refusal to refer Brown in 1984. Further, Brown's file did not contain a copy of the Board's decision when Walker reviewed it.[6]

On March 31, Brown registered at the Respondent's hiring hall after the project on which he had been working ended. It is undisputed that on April 3 Walker deviated from the Respondent's established referral procedures by failing to refer Brown for work with the Employer based on Phillips' representations regarding Brown's ineligibility to work for the Employer and the Employer's December 22, 1984 letter stating that it would not rehire Brown. On April 5, Brown protested Walker's refusal to refer him and specifically mentioned that there had been a legal proceeding that negated the effect of the Employer's letter on which Walker was relying to deny referral. Nevertheless, Walker persisted in his refusal to refer Brown to the Employer's Georgetown jobsite.

Although it is clear from the record that Walker himself did not possess any animus towards Brown, we conclude that his refusal to refer Brown on April 3 was discriminatory. Based on Phillips' lengthy posting of the notice from the prior case and his failure to inform Walker about the Board's decision there, we agree with the judge that the evidence supports a finding that Phillips had continuing animus towards Brown for the same reasons that McMahan did. We also adopt the judge's finding that Phillips was acting as the Respondent's agent in providing information to Walker about Brown's status with the Employer because, as the judge found, Phillips remained on the Respondent's payroll at the time.[7] We therefore conclude that Phillips' animus towards Brown, as demonstrated above, was attributable to the Respondent. We also find, consistent with the judge's decision, that the Respondent could not rely on the Employer's December 22, 1984 letter to justify its failure to refer Brown because that letter had resulted from an earlier discriminatorily motivated contact between McMahan and a Papco official. Thus, because the reasons for which Walker refused to refer Brown were discriminatory at root, we conclude that the Respondent violated Section 8(b)(1)(A) and (2) by this conduct.[8]

However, after Walker unlawfully refused to refer Brown on April 3, the judge found that he made ''a real and continued local effort to try and get Brown employed on the Papco jobsite.'' In this regard, there is evidence that shortly after April 5, when Brown complained about the situation, Walker made a phone call to Project Superintendent Glenn Faulk concerning the Employer's employment of Brown. Faulk told Walker that he had strict instructions from James Martin, the Employer's president, not to hire Brown. Thereafter, about mid-April, Walker instructed his business agent, Scott Lapman, ''to get out there and do everything he could to get [Brown] rehired.'' After Lapman went to see Faulk, Lapman reported back to Walker that it was ''impossible'' to get Brown on the Georgetown project because the Employer refused to hire him. Walker's further efforts to secure employment for Brown ultimately resulted in a new letter, dated August 15, that Martin wrote to the Respondent in which he stated, inter alia, that the Employer did ''not intend to employ [Brown] at our Georgetown project, or any other job.''

In these circumstances, we conclude that the Respondent's backpay liability to Brown terminated about mid-April when Faulk told its representative, Lapman, that the Employer would not employ Brown in any event.[9] We do not require the Respondent to perform the futile act of referring Brown to the Georgetown project after the Employer, pursuant to its right under the collective-bargaining agreement, had vehemently

[6] It also appears that by this time the Respondent had removed the Board's notice in the prior case from its bulletin board.

[7] Although the Respondent has pointed out that Phillips by this time was an agent for the Employer which had appointed him foreman on the Georgetown project, we do not find that this factor determines Phillips' status as a union agent in this case.

[8] In adopting his colleagues' finding that the Respondent violated the Act by refusing to refer Brown for employment, Member Devaney does not rely on their conclusion that Phillips' animus towards Brown was attributable to the Union because the complaint fails to allege that Phillips was a union agent. Member Devaney finds rather that the Respondent's conduct was unlawful because the Respondent did not comply with its established hiring hall procedures when it failed to refer Brown on April 3. In reaching this conclusion, he stresses the evidence here demonstrating that the Respondent effectively operated an exclusive hiring hall at least insofar as it concerned Brown's employment opportunities with the Employer. The Board has held that a union which operates an exclusive hiring hall must represent all individuals who seek to utilize the hall in a fair and impartial manner. *Plumbers Local 725 (Powers Regulator)*, 225 NLRB 138, 143 (1976). It is also clear that the labor organization conducting such an operation has a duty to conform with and apply lawful contractual standards in administering the referring system, and any departure from the established procedures resulting in a denial of employment constitutes inherently discriminatory conduct. Id. at 143; *Operating Engineers Local 513 (S. J. Groves & Sons)*, 199 NLRB 921, 922 (1972). In denying Brown a referral on April 3, Walker relied on the December 1984 letter which the Board earlier essentially found was the result of a discriminatorily motivated contact initiated by then Respondent Official McMahan and which was no defense to the 8(b)(1)(A) violation found in the refusal to refer Brown to Papco in 1984. Because Walker relied on that letter in denying referral here, Member Devaney concludes that the Respondent has not offered valid justification for operating its hiring hall in a discriminatory manner. For these reasons, Member Devaney agrees with his colleagues that the Respondent's conduct here constituted a violation.

[9] In so concluding, we specifically reject the judge's finding that the Employer's ''letter of August 14, 1989 remains as suspect and inefficacious in resolving the instant dispute, as prior letter [sic] of December 22, 1984 was found to be.'' We find, rather, that the August 14 letter legitimately resulted from Walker's persistent efforts to secure employment for Brown with the Employer.

rejected Brown as an employee.[10] Based on our finding regarding the duration of the Respondent's backpay liability, we find it unnecessary to expunge from the Respondent's files the Employer's August 14, 1989 letter stating its unwillingness to hire Brown. The evidence here shows that the letter was not the product of any taint and, as noted, the Employer had informed the Respondent 4 months earlier that it would not reemploy Brown. However, we shall require the Respondent to expunge the Employer's December 22, 1984 letter from its files because, as the Board found in the earlier unfair labor practice case involving Brown, the Respondent in effect solicited the letter with a discriminatory intent, and the Respondent later relied on it in April 1989 when the Respondent unlawfully refused to refer Brown for employment with the Employer.[11] Finally, although in the Board's 1985 decision a broad order was issued, we conclude that, in light of the length of time since the events of that case and the events here and also of Walker's good-faith efforts in this case to obtain employment for Brown, the Respondent has not engaged in conduct that warrants a broad cease-and-desist order under *Hickmott Foods*, 242 NLRB 1357 (1979). We shall modify the judge's remedy consistent with our findings above.

REMEDY

Having found that the Respondent has violated Section 8(b)(1))(A) and (2) of the Act, we shall order it to cease and desist, and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to make whole James L. Brown, Jr., with interest, for any loss of earnings and other benefits he suffered as a result of the Respondent's discriminatory refusal to refer him for employment from April 3 until mid-April 1989, when the Employer lawfully declined to hire Brown. We shall also require the Respondent to expunge from its files the Employer's prior letter of December 22, 1984, stating its unwillingness to hire Brown and to notify him in writing that it has done so.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, Local 601, Charleston, South Carolina, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

''(b) In any like or related manner restraining or coercing employees or applicants for employment in the exercise of the rights guaranteed them by Section 7 of the Act.''

2. Substitute the following for paragraphs 2(a) and (b), and reletter subsequent paragraphs accordingly.

''(a) Make whole James L. Brown, Jr. for any loss of earnings and other benefits he suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

''(b) Expunge from its files the Employer's letter of December 22, 1984, stating its unwillingness to hire Brown and notify him in writing that it has done so.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discriminatorily fail and refuse to refer James L. Brown Jr. to employment with Papco, Incorporated, or any other employer with which we have an employment referral system.

WE WILL NOT in any like or related manner restrain or coerce employees or applicants for employment in the exercise of the rights guaranteed them by Section 7 of the Act.

[10] See *Longshoremen ILA Local 1593 (Strachan Shipping Co.)*, 234 NLRB 511, 513–514 (1978).

[11] Member Oviatt would not order expunction of the Employer's December 1984 letter. As found above, the Respondent's backpay liability here runs from April 3 to mid-April 1989, and we have adopted the judge's finding that the refusal to refer Brown in early April was based in large part on Phillips' continuing animus towards Brown. The judge in the earlier *Papco* decision involving these same parties (see fn. 2, supra, and related text) discussed the Respondent's then business manager's seeking the December 1984 letter as part of his attempts to avoid referring Charging Party Brown. But neither the judge nor the Board in that case found an improper motive on the Employer's part in declining to reemploy Brown, nor did the Board order expunction of the letter (though it did modify the judge's order in other respects). The 1984 letter has now been superseded in any event by the April 14, 1989 letter from the same Employer reiterating that it did not intend to employ Brown on any job. We have found that letter legitimate. In these circumstances, Member Oviatt deems it unnecessary and inappropriate to, in effect, amend the Order in the prior case issued over 6 years ago.

WE WILL make whole James L. Brown Jr. for any loss of earnings and other benefits he suffered as a result of our unlawful failure to refer him to employment with Papco on April 3, 1989, by paying Brown a sum equal to the amount he would have earned absent the unlawful conduct, plus interest, for the period beginning on that date and ending in mid-April 1989, when Papco lawfully declined to employ Brown.

WE WILL expunge from our files Papco, Incorporated's letter of December 22, 1984, stating its unwillingness to hire Brown and notify him in writing that it has done so.

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL–CIO, LOCAL 601

Jasper C. Brown Jr., Esq., for the General Counsel.
Paul Supton, Esq. (Van Bourg, Wineberg, Rogers & Rosenfeld), of San Francisco, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT G. ROMANO, Administrative Law Judge. These cases were tried in Charleston, South Carolina, on April 19, 1990. The consolidated complaint issued on November 16, 1989.[1] James L. Brown Jr. (Charging Party or Brown) filed the charge in Case 11–CB–1772 against International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, Local 601 (Ironworkers Local 601 or Respondent Union) on April 27. Brown filed the charge in Case 11–CB–1793 against Respondent Union on August 4. The complaint alleges that Respondent Union has violated Section 8(b)(1)(A) and (2) of the Act.

The primary issues are whether Respondent Ironworkers Local 601, for unfair, arbitrary, and invidious reasons in violation of Section 8(b)(1)(A) and (2) of the Act, has: (1) since on or about April 4, failed and refused to refer Brown for employment at Papco, Incorporated (Papco); and, since on or about July 24 through August 14 (as conceded by General Counsel at hearing and/or in brief) failed and refused to refer Brown for employment at the Cooper River bridge construction site of John F. Beasley Construction Company (Beasley) at Charleston, South Carolina. By answer filed November 28, 1989, Respondent Union has denied the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent Union on or about June 26, 1990, I make the following

FINDINGS OF FACT

I. JURISDICTION

Papco, an Alabama corporation, has a jobsite located at Georgetown, South Carolina, where it is engaged in maintenance and/or construction of a paper mill. Beasley, a Texas corporation, has a jobsite located at Charleston, South Carolina, where it is engaged in the construction of the Mark Clark Bridge over the Cooper River, as part of a highway construction job.

In a material annual period, each company has received goods and materials valued in excess of $50,000 at its above respective jobsite directly from points located outside the State of South Carolina. At hearing the Respondent Union admitted and/or I find that Beasley and Papco, each respectively, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

1. Dissident union membership; and prior Papco employment

James L. Brown, of Charleston, South Carolina, is a journeyman ironworker who has been a member of Ironworkers Local 601 at Charleston for some 27 to 28 years. Brown has been a longtime critic of the Local Union and its officers. Brown has previously run on several occasions for offices of business agent and union president (apparently), each time unsuccessfully. In any event, Brown more recently expressed his opposition to union leadership in running (pre-1985) for the union presidency against a prior incumbent (George Simmons); and Brown continued to do so later during a period of (appointed) service on the Local Union's executive board. (Brown last served on the Local Union's executive board in 1987 by an appointment of then President Leonard Davis.)

It is undisputed that Papco had previously terminated Brown on May 21, 1975, with Brown's status change card then marked not for rehire. (Brown clarified that the fight was not on the job, but at a party at the supervisor's home.) In any event, Papco fired Brown at that time for insubordination to a supervisor, which involved a physical fight between Brown and the supervisor.

Papco subsequently reemployed Brown from November 14 until December 18, 1978, when Brown was terminated in a reduction in force. Papco next employed Brown from November 19, 1979, to April 10, 1980, when Brown was again laid off in a reduction in force, notably after having worked for Papco as a foreman during the last week or so thereof.

2. Prior cases

After one prior Board proceeding against Respondent was resolved without litigation (as Brown recalls, during the presidency of Phillip Lee), Brown thereafter successfully engaged in two litigated Board proceedings on later meritorious charges that he brought against the Local Union.

a. *Board adopted findings of JD–52–84*

In 1982 Brown filed charges in Case 11–CB–1126, which were litigated in 1983. In 1984, without exceptions filed, the Board adopted formal findings of Administrative Law Judge Donald R. Holley thereon in that Respondent Ironworkers Local 601 had violated Section 8(b)(1)(A) of the Act by having threatened Brown with physical violence because he had requested permission to copy the Local Union's referral list,

[1] All dates are in 1989 unless otherwise indicated.

and by the Local's charging Brown excessive fees for copying the lists. (Respondent Union was also found to have violated Section 8(b)(1)(A) and (2) of the Act for having discriminatorily refused to refer an applicant, other than Brown, under the Union's then determined exclusive referral system.)

b. *Iron Workers Local 601 (Papco, Inc.), 276 NLRB 1273 (1985)*

In 1984 Brown filed charges in Cases 11–CB–1280 and 11–CB–1320; and, a consolidated complaint issued thereon, which was heard in 1985. The Board has since (essentially) adopted the findings of (former) Administrative Law Judge Hutton S. Brandon, in *Iron Workers Local 601 (Papco, Inc.)*, 276 NLRB 1273 (1985), that Respondent Union had violated Section 8(b)(1)(A) as was noted there (only) alleged.

Judge Brandon had found that Respondent Union violated Section 8(b)(1)(A) of the Act: by Local 601's business agent Herman McMahan's threatening Brown with physical assault, and by McMahan's then physically assaulting Brown for having questioned a certain union expenditure; by McMahan's refusal to refer Brown to employment with Papco and to certain other employers, with whom the Respondent Union then had collective-bargaining agreements; and, by Simmon's disregard of referral procedures, and by Simmon's extending preference in referrals to individuals in a manner not in accord with Respondent Union's announced hiring hall procedures.

Judge Brandon also found there was a conscious effort on Business Agent McMahan's part to avoid referring Brown to Papco, and that McMahan's testimony about a preparation of a certain November 26, 1984 letter to H. S. Kelly, Papco's (then) project manager at the Papco Georgetown jobsite, was incredible. Judge Brandon then further pertinently concluded:

> An arrangement by which a union undertakes to identify for an employer those former employees whose records the employer has marked 'not for hire' in itself smacks of a breach of the union's duty of fair representation. But beyond that, other circumstances suggest that the alleged 26 November letter even if it was in fact mailed to Papco was a sham having no purpose other than to avoid referral of Brown.
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> Even if McMahan's 26 November letter was actually sent his discriminatory intent in including Brown in those not to be considered for rehire in that letter is revealed by McMahan's admitted knowledge that he knew that Brown had been hired twice by Papco subsequent to his 1975 discharge by Papco. Accordingly, Papco itself had disregarded Brown's 1975 discharge as a basis for refusing to rehire him. I again do not credit McMahan's self serving and uncorroborated testimony that Papco's Wilbur Nations told him Brown's subsequent hire had been a mistake. In this regard, it is to be noted that Brown had been promoted to foreman during his last period of employment with Papco shortly before the reduction in force that resulted in his termination. Such promotion is inconsistent with a belief that his hiring was a 'mistake.' But even if Nations had made such a statement to McMahan, it would not have provided a basis for McMahan's disregarding Brown's subsequent hirings by Papco for his records after those periods of employment were not marked 'not for hire.' Only McMahan's demonstrated hostility toward Brown and discriminatory motivation can explain McMahan's persistence in avoiding referral of Brown to Papco.

The Board adopted Judge Brandon's recommended Order that the Respondent Union cease and desist from such conduct, including that Respondent cease and desist from refusing to refer employees or applicants for employment through its employment referral system in disregard of the provisions of the collective-bargaining agreements it has with various associations and employers or in disregard of its published internal rules and regulations regarding such referrals; and, that it cease and desist from in any other manner restraining or coercing employees or applicants for employment in the exercise of rights guaranteed them in Section 7 of the Act.

The Board modified the administrative law judge's recommended Order to reflect the additional finding he had made that the Respondent Union had refused to refer Brown for discriminatory reasons; and accordingly, the Board ordered that Respondent Union, its officers, agents, and representatives were to *additionally* cease and desist from discriminatorily refusing to refer employees for employment through its employment referral system because they have been critical of the Union or the way it operates. Id. at 1273 fn. 1.

Apparently a 2- to 3-year period of quietude in job referrals then developed, before Brown had occasion to file the instant charges in 1989. Indeed, between November 27, 1984, when (as found in earlier proceeding) McMahan had (initially) told Brown that he would not be referred to the Papco job because he was on a not for rehire list there (despite Papco's employment of Brown twice in the interim since the earlier Brown fight with a Papco supervisor in 1975), Brown never went out to Papco again. In that regard, as Brown has recalled, it was probably November–December 1985 when Papco had moved out (the last time); and, Brown didn't believe Papco had had another job in there; or, if they did, Brown was not aware of it. Moreover, Brown testified convincingly that he thought he would be aware of it (another Papco job) because of his continuing exclusive use of the hall for securing work.

3. A preliminary view of the contentions

a. *Case 11–CB–1772 (Papco)*

(1) By General Counsel

The General Counsel contends the instant consolidated complaint is but a continuation of the above history of Respondent Union's commission of unfair labor practices against Brown; and indeed, argues the presently alleged refusal to refer Brown to Papco evolved directly from certain facts that were addressed and considered in cases resolved in 276 NLRB 1273, supra, pointedly a certain Papco December 22, 1984 letter to Union that had resulted from Union Business Manager McMahan's contact of Papco in a determined course of discriminatory conduct.

In that regard, the December 22, 1984 letter was addressed to McMahan and was from James L. Martin previously described as a higher official of Papco in Mobile, Alabama.

The Board adopted findings of Judge Brandon that the above Martin letter had resulted from an interim McMahan contact of Papco officials, that the General Counsel would also have noted occurred despite the interim Papco employment of Brown on two interim occasions, and even despite interim notice to Respondent's counsel that Papco Project Manager Kelly had on December 12, 1984, in writing verified Papco had no objection to Brown working for Papco. Though Kelly had later disclaimed a prior awareness of an earlier Papco bar, Judge Brandon found that rather than relying on Manager Kelly's statement and referring Brown, McMahan had attempted to have Kelly's position on employment of Brown reversed by contacting Kelly's superiors.

Though discredited, McMahan had sought to explain his further contact of Papco as made in order to find out Papco's position on those named in McMahan's purported letter of November 26, 1984. In contrast, the December 22, 1984 letter that resulted from McMahan's persistence in contacting higher Papco official addressed only the subject of a Papco bar of Brown, 276 NLRB at 1278.

It is apparent that in the prior proceeding the December 22, 1984 letter had no efficacy as a defense available to Respondent Local Union's alleged and proven violation of Section 8(b)(1)(A). The General Counsel presently contends that Respondent cannot rely on that same letter to refuse to refer Brown; and, with Respondent Union's continued reliance on such an improperly solicited December 22, 1984 letter, the instant complaint only reflects Brown's continuing attempt to secure from Local 601, but fair and nondiscriminatory treatment for himself and others.

(2) By Respondent Local 601

At instant hearing Respondent Union centrally admitted the above December 22, 1984 letter was found in Brown's file, and because of that, on or about April 4, a new administration of the Local Union had refused to refer Brown to available jobs at Papco, and at the same time had referred others, even though Brown was chronologically more eligible for referral there pursuant to the Respondent Union's out-of-work list(s).

However, Respondent defends that The General Counsel has misperceived the clear import of the Board's prior decision. Thus, contrary to the General Counsel, Respondent Union centrally argues that although the Board found that Respondent Union's earlier denial of a referral to Papco was intentionally discriminatory, the finding was clearly based on Respondent Union's (then) business manager's, McMahan, personal animosity evidenced toward Brown because Brown had been critical of the Union's policies. However, Respondent centrally argues that Employer Papco's letter of December 22, 1984, in affirming a (1975) barring of Brown from its jobsites was not itself found by the Board to be unlawful. There was thus no finding, or conclusion that the December 22, 1984 letter might not be relied on in the future, or that the Union was required to expunge the letter from its files. Moreover, Papco was not a party in that proceeding; and, the Board's prior Order did not emanate against Papco, and does not bind Papco.

In that very regard, Respondent Union then argues that the General Counsel has taken a quixotic position that Respondent was required to refer Brown to the Papco jobsite, despite the fact that it is thus shown and unrebutted that the Union knew that were it to refer Brown to Papco, Papco would not employ Brown because Brown had been barred from all Papco jobs because of his 1975 battery on a Papco supervisor; despite the fact that Respondent independently had a right to reject Brown under the terms of the existing collective-bargaining agreement; and despite clearly changed union circumstances that do not support any claim of continued union discrimination against Brown.

The *urged* changed union circumstances are: (a) the previously offending and hostile business manager (McMahan) had been removed, and in his place the International had installed its general organizer/trustee (Billy Joe Walker), a nonhostile administrator; and (b) the Respondent Union (through Walker) had done everything in its power (I especially note) subsequently (after an initial failure and/or refusal to refer because of the letter), though unsuccessfully, to persuade Papco to lift the December 22, 1984 stated bar against an employ of Brown at its jobsites.

Respondent contends that the General Counsel's theory of violation has shifted from an initially stated unlawfulness based on union reliance on the December 22, 1984 letter asserted as previously found to be illegal, to less unequivocal position being stated at end the of the hearing that the trustees, (sic) appointed by the International Union in the spring of 1989, shared animus and hostility of former Business Manager McMahan. Respondent contends that neither position is supported by the evidence presented of record.

b. *Case 11–CB–1793 (Beasley)*

Respondent also admitted at hearing that it temporarily refused to refer Brown to the Beasley jobsite at Charleston, South Carolina, on or about July 24, and at the time referred certain others, even though Brown was chronologically eligible to be earlier referred under Union's out-of-work list. However, the Respondent contends that it did so properly because Brown (as well as others similarly passed over) was (were) not qualified to perform the particular work of connecting the steel on the bridge structure as required by the Employer under the initial circumstances of that job.

Respondent argues that the General Counsel's position on the July 24 Beasley nonreferral has simply breached common sense in that it would have the Board order Respondent to dispatch Brown to a position of employment, namely as a connector (on a then-troubled bridge being constructed over the Cooper River), to do certain connector work which the Union *reasonably* believed, based on Brown's experience and capabilities, Brown was not qualified to perform, and which would jeopardize Brown's life and safety and that of his fellow workers. Respondent contends it is apparent that it held no animosity towards Brown on the Beasley jobsite, because it referred Brown to the Beasley jobsite as soon as ironworker jobs other than connector opened up (beginning) on August 14.

The General Counsel counterargues that the Union offered to refer Brown to the Beasley job only after Brown had filed (second) instant charge on August 4; and the General Counsel further contends, contrary to Respondent Union, that nonconnector jobs were in fact earlier available. The General Counsel alternatively argues, that by the refusals of Walker and Phillip Lee (Union's present business manager, and appointed by Walker) to refer Brown to the Beasley jobsite, on the basis of (essentially) their unsubstantiated perceptions

that Brown was not qualified as a connector, the Respondent Union has failed to employ and follow stated objective factors set forth for the operation of its hiring hall, as required.

B. *The Evidence*

1. Changes in the Local

a. *Administration*

Walker has been an ironworker for 35 years. For the first 15 years Walker worked as a connector. However, during the last 5 of those years he worked mostly as a foreman or superintendent. For the last 20 years Walker has been regularly employed as a union official. Walker initially was employed as business manager of Ironworkers Local 5 in Washington, D.C., for some 15 years. More recently, the International employed Walker as a general organizer and administrator. In mid-March, International's general president appointed Walker to be administrator of Respondent Union. Walker took over Local 601 on March 20.

Walker had previously been working for about 18 months as administrator of Ironworkers Local 272 in Miami (correcting similar problems) when Walker was called to Washington about mid-March to meet with the general president about Local 601 and the problems that Local 601 had been having throughout the last 10 or 12 years, including a purported mismanagement of per capita moneys that Local 601 owed the International. At that time the International gave Walker letters (written authority) to put Local 601 under supervision. Walker decided and/or knew then that he would put Local 601 under supervision on March 20.

Walker took over the administration of the Local from its business manager, Johnny Phillips. On March 20, Walker terminated Phillips and all the Local's officers, including Phillip Lee, who was then a member of the Local Union's executive board. Walker asserts he terminated Phillips because Phillips wasn't working out as an elected business manager.

Starting on March 20, Walker brought in Scott Lapman from outside the Local to serve as a temporary business agent. However, Walker had Phillips remain briefly. Thus, Walker related he kept Phillips on a week or 10 days to help Walker get orientated with what was going on, though Walker added there was never a doubt that Phillips was going to leave. Walker explained otherwise that he gave Phillips a week's vacation, allowing Phillips in that period to effectively work there a few hours a day. When after about 6 weeks (thus by early May), Lapman in turn didn't work out, under circumstances to be discussed further below, Walker appointed Phillip Lee as business manager (about a month later) on June 18.

In the interim, Brown was generally aware of the initial changes being effected in union leadership at the Local. Brown confirms the Local Union's business manager at the time was Phillips; and, Brown recalled that before Phillips, it had been Herman McMahan, with whom Brown had earlier experienced the above referral difficulties while engaging in protected conduct as a union dissident. Certain restraints placed on that protected activity resulted in the Local Union's determined violation of the Act in Brown's account above, principally by discriminatory and/or coercive conduct of (former) Business Manager McMahan, and Respondent Union's (then) president, Simmons, who acted as business agent when McMahan left in January 1985.

On one occasion, Brown had (erroneously) related that McMahan was probably the last elected business agent. On later occasion Brown then recalled more accurately that Phillips was initially appointed as business manager (by whom, he did not know) in late 1986, and had served under that appointment until later elected in 1987 to a full term of office as business manager of Local 601. Phillips was (during some undisclosed time) McMahan's brother-in-law.

Lapman, who was out of Local 808 in Orlando, Florida, served as temporary business agent for Local 601 starting on March 20, but for only about 6 weeks. There was a lot of hard feelings from members about the appointment of Lapman as business agent of Local 601, because Lapman was not one of them, i.e., not a member of Local 601. When Lapman realized it just didn't work out, he quit.

Walker next questioned members in the Local (including Brown) before he appointed Phillip Lee as the Local's business manager. Lee had worked as a call-in ironworker for about 18 years, during which period he has tied rods, done connecting work, some welding, finishing, and miscellaneous ironworker work. In short, Lee has done just about all of an ironworker's work.

Lee had also been president of the Local for 3 years in the early 1980s, during which latter period he was paid as a dispatcher for 9 months. Lee later served as a member of the executive Board for an undisclosed period of time. As noted, Lee was such (apparently) at the time of Walker's takeover. In some unspecified period Lee had also served as recording secretary of Local 601.

Walker didn't get any negative from Brown, or a number of other Local 601 members he questioned about an appointment of Lee as business manager. Indeed, Lee's father had been business manager of Local 601 on three different elected occasions stretching over a period of 28–30 years, and through 1978, when McMahan ran against him, and was elected. Everyone liked the idea of Walker's appointment of Phillip Lee as the business manager of Local 601.

Brown relates that he has known Phillip Lee for over 20 years; and Brown confirmed he told Walker that Lee would be the guy he would appoint. Brown specifically told Walker that Brown would like to see Lee, who had gone to work in a Navy yard, to once again get involved in the operations of the Local.

The parties stipulated Lee testified on Brown's behalf in a previous NLRB case. Lee later testified more precisely that he was a material government witness in regard to an assault charge that Brown filed against then Business Manager McMahan. However, Lee's own view was that his testimony had nothing to do with an alleged failure of the Union to refer Brown to Papco, though Lee had heard of it; and, he was at some point aware there was a Board case on it. In any event, noting he did not take office as business manager until June 18, Lee initially said he never told Walker about the Board case. On cross-examination Lee did qualify that it was possible that he had discussed the Board's case with Walker at the time of Walker's direction to him in July to contact Martin, but he didn't recall the details. Lee had also said on direct that he did not recall being present at any time when Phillips and Walker had discussed it. On cross-examination Lee related that it was very likely, adding imme-

diately, possible that Lee was present during a discussion about the Labor Board case where Phillips was present, but he also really didn't recall that.

b. *Status of the Local; applicable agreements*

On March 20, there were approximately 500 active and inactive members of Local 601, though some 400 of them were employed elsewhere in major cities throughout the country. Indeed, a survey Walker then conducted established there were only 47 people that lived close enough to be referred out of the hall to work. Even more notably, there was then only 1 union contractor with a job in the area; and, there were only 12 employees actually working at this time. (There are now about 550 active and inactive members of Local 601.)

When Walker took over, a master agreement existed between the District Council of Ironworkers of the Southeastern States District Council (District Council) of International, and the Union Contractors and Subcontractors Association, Inc. The District Council was (apparently) then composed of six local unions, including Local 601. The master agreement's duration extended from October 1, 1987, through September 30, 1990. The master agreement provides (in general) for a four-(or five)-group referral system (basically) designed around length of time worked in the area; duration and area of claimed work specialty; and journeyman and apprenticeship status (and others). For the actual use of material lists in practice thereunder, see below.

Walker relates there was a lot of work in the area, the problem was there weren't any union contractors to bid the work. As administrator, Walker's job was to come in and run the local Union; get it squared away; get some union fair contractors reestablished to bid the work there; to get the men back to work; and finally, to pay off the debt that the Local owed the International.

When Walker took over as administrator of Local 601 on March 20, Brown was working as a foreman for Hudco, as he did through the last day of March when that job ended. Brown recalled that he had first met Walker back in the late 1960s, early 1970s when Walker was business agent for Local 5 in Washington, D.C., and Brown was working there at the time. Walker did not recall knowing Brown previously, but he conceded that it was very possible that he had (first) met Brown there, as they had a lot of work in Washington.

The first time Brown met Walker in 1989 was when Walker came on a Hudco job in Harleyville, South Carolina, as Brown recalled it, some time after March 20 and prior to March 30. Brown was foreman on the Hudco Harleyville job; and Glenn Corby was steward. Seemingly, Brown recalls Walker had (first) told Brown at that time of an upcoming Papco job at Georgetown (paper mill); and Walker was enthusiastic that there would be a lot of work available. Though Brown asserts he already knew about it, Brown acknowledged that Walker had (initially) told Brown about Papco's upcoming Georgetown job.

Walker's understanding is that International Paper owns Papco; and, that Papco had worked in the area under contract years ago at International paper's paper Mill in Georgetown, South Carolina, but not currently. Though Walker undoubtedly knew of a prospect of it beforehand (I find) Walker first learned on March 30 (Thursday), that a Papco union job was (actually) going to start up when he attended a meeting with the president of Papco, and a project agreement was actually put together, i.e., signed, that day.

The NKR Project, International Paper, Georgetown agreement (G.C. Exh. 5) is a wage (apparently not benefit) concessionary project agreement that was executed by Walker on behalf of International (as well as by other building trades representatives, on behalf of their respective craft International Unions). The agreement is singularly applicable to this project to enable a union contractor (Papco) to get certain construction (plant maintenance, repair, and renovation) work at Georgetown. While under the Papco project agreement the Employer maintains certain rights in manning the job, the project agreement otherwise provides, ''the Contractor is bound by the hiring practices in the local area not inconsistent with the terms of this Agreement.''

Though the project agreement recites an entry date of March 1, it bears a signature page date of March 30, along with an executed signature of James R. Martin as Papco's president and general manager. Though there is confusion of record, weight of more consistent and credible evidence would indicate that after the project agreement was signed at the March 30 meeting, Papco's superintendent, Glenn Faulk (Faulk), had then made his first request for men. (Walker's first referral thereon was made, I find, some time early the next week, on April 3 or 4, but more probably on April 3, Monday, with the requested men to report to the job on April 4 or 5, but more probably April 4.)

Walker testified, without contradiction, that at the project meeting, the Company had also asked for Phillips to be their foreman/supervisor. Walker related that Phillips in turn had later asked for two men by name, which Walker wrote down on the pad on the same day Phillips made the request.

In the interim, on March 30, on his way home, Brown had stopped by the union hall to drop Hudco steward reports off at the request of Union Steward Corby. On that occasion Brown talked to Walker about the Papco job out in the hall between the conference room and the office. Brown was sure there were other people present, but didn't recall who, since, as he asserted, he hadn't been introduced to all the people in the hall because he had been working, probably 12 hours a day, from the time the International took over.

Walker informed Brown (at least) then, if he had not also earlier on the Hudco jobsite, that Papco's International Paper job at Georgetown was going to start; and, Walker told Brown that as soon as Brown finished up in Harleyville, to let Walker know, because he needed people down there (at Papco). Brown's job at Hudco ended the very next day, March 31 (Friday). On March 31, Brown came by the union hall. Brown signed the 30-day book, one of (at least) 2 register out-of-work logs, or lists then in actual use.

2. The hiring hall system in local operation in April

At this time (at least materially) the Union used both a 30-day book and a daily work log, or list, in making its referrals. The practice was that on becoming out of work, a member-employee-applicant (employee) could sign and then remain on the 30-day book for 30 days until the employee went to work. (At that time the practice also was that an employee was required to sign this 30-day log every 30 days to remain on it.) The Union additionally used a daily work log that an employee signed each day to show the employee

went to the hall that morning/day for a referral. (The daily work log was readily accessible to all. It was kept on a little shelf, right by the office as the employee walked in the door.)

Brown credibly summarized his understanding of the system at this time to be: if you went into the hall and you signed the daily work log, and you were in the hall when a job call came in and they needed men, they went (the Union referred) from this daily log. If there were no men in the hall, they then went to the 30-day book and called people to fill the job order. Use of the daily work log and 30-day book in this manner continued until May 23, 1989.

Under existing contract (whether it be the Papco project agreement or the otherwise applicable master agreement), and hiring hall rules and/or practices that were in effect when Walker became administrator (and as have remained in effect thereafter), an employer has a right to request that an employee be referred by name. Thus, while the project agreement provided that the Union would be a source of employment referrals (at least for 48 hours), and that the Union ''will be contacted and shall refer all applicants for employment to this project according to the standards of criteria uniformly applied to any project in the area.'' (G.C. Exh. 5, p. 5, art. III,A.) It otherwise states simply, ''The contractor may hire employees by name who have special skills or have previous working experience.'' (Id. at art. II,1,C.) There is no stated ceiling in the employment right; and, there is no explicit requirement that an employer give the Union a written letter when requesting an employee by name.

In comparison, the master agreement, apart from providing an employer a right to hire its key supervisory personnel, provides (materially, i.e., on coming into a Local's jurisdiction) that the employer may bring in employees to man up to 40 percent of a job. The master agreement otherwise states, ''the employer shall have the right, on any job, to request by name any applicant for employment in Group A only, as defined below, regardless of such employee's position on the Referral List.'' (G.C. Exh. 4, p. 3, LL. 2–5). Essentially group A, one of five contractual groups (or lists) covered tradesmen working in the Local's geographic area for 4 years as a journeyman or apprentice; and, if claiming specialty/classification, also working with 6 months such experience in the same period. However, an apprentice did not sign group A list. (The apprentice did not sign this list until the apprentice became a journeyman.)

The related general practice is an employer just calls the hall, and asks for men. When the contractor calls in the union records on a yellow pad: the contractor's name, the job location, how many men the employer has asked for, and who actually made the call. If an employer requests a person by name, the Union also puts that person's name on the pad, and writes requested behind it.

The Union does not require a written letter from an employer before it will send a man out that is requested by name. Though Walker thought they possibly could require it under the contract; Walker felt that would alienate contractors, some of whom call in for 20 men for 1 day. Walker relates he has been a business manager or acting business manager for almost 20 years and to his knowledge it's never been done. Walker testified (at least) that his practice was they just called by name. Under hiring hall provisions in both agreements the Employer (I find) has the right to reject people that the Union sends. (Compare clear statement thereof in master agreement, G.C. Exh. 4, p. 2, LL. 23–24, and Papco general management right to hire in project agreement, G.C. Exh. 5, p. 3, art. II,1,C.)

The changes that Walker later made in hiring hall rules and/or practices, on May 23, did not affect the practice of the Union's acceptance of an employer's (oral) call for an employee by name, nor the employer's contractual right to reject an individual that the Union might refer. If not immediately, at least with implementation of Walker's changes in the hiring hall system imposed on May 23, Walker also imposed his longtime view and practice that a member had prerogative to refuse a job without sacrifice of his position on an out-of-work list. Although after May 23, there was no 30-day book in use, when a daily work list was exhausted, the next preceding such list was successively used, until all the job requests were filled.

3. The early April referrals to Papco

Brown went to the hall on the following Monday, April 3, at which time he signed the daily log. On April 4 (Tuesday), Brown again came to the union hall. On that occasion, Brown found out from word of mouth (and Walker later verified it), that Local 601 members Johnny Phillips, Danny Steff, and several others had (in the interim) been referred to the Papco Georgetown job.

At one point, Walker asserted that on March 30 or 31, he had made the decision who would be referred, though it would appear more likely that the actual referrals were made on April 3 or (at latest) 4, as found above. In any event, in making the referrals, Walker started from the top of the daily log, and he has acknowledged that he did not refer Brown to Papco.

Walker explained that on (I find) the prior March 30, Thursday evening, after he had just come back from the (project agreement) meeting, Brown was in the office. Walker was excited about Papco's Georgetown job getting ready to start. Walker told Brown that they were going to get 30 or 40 men (employed) up there. Walker testified credibly that he had full intention at that time of sending Brown out on that job. When Walker finished talking to Brown, Walker then went back into his office.

Former Business Manager Phillips was still on Union's payroll, though Papco's superintendent, Faulk, had just asked Walker to send Phillips as Papco's foreman on the job. Phillips was in the Union's office; and, on Walker's entry, Phillips told Walker you better look at Brown's file before you send him out to Papco. (In November 1984, Phillips was referred to Papco at a time when Brown was not, though unlike Brown, that Phillips was not on either list, 276 NLRB at 1276.)

On March 30, Walker asked former Business Manager Phillips was there a problem. Phillips said yes, ''Brown's not eligible for rehire up there; and, if you send him up there, you're going to create some big problems.'' With that Walker got Brown's file out, and he reviewed it. Walker has testified (and I am persuaded on weight of evidence) credibly that to his (then) knowledge he saw everything that there was to be seen in Brown's file. While all counsel were *un*willing to stipulate to it as such, noting content of the December 22, 1984 Martin letter had not been actually set forth in earlier decision, what purported to be the Martin letter earlier re-

ferred to in 276 NLRB at 1276 was offered and received in evidence without objection. (On the General Counsel's objection thereto, a Walker memo addendum on the letter was not offered.)

The letter received in evidence bears purported James R. Martin's signature on letterhead of Papco, general contractor. It also bears date of December 22, 1984; and, it is addressed to Herman McMahan, with copy to H. S. Kelly, who was Papco's project manager at the time in 1984. Weight of evidence, such as has been presented of record herein, warrants further present finding that on March 30 Walker found Martin's letter of December 22, 1984 (R. Exh. 2), previously addressed and considered by the Board, still in Brown's file; and Walker read it at that time. That statement (letter), *as previously found*, said that Brown was not eligible for rehire for Papco; and that he was not allowed to be on International Paper Co.'s property.

However, it had also been previously found that on December 12, 1984 (then), Papco Project Manager Kelly had earlier verified: that Brown had worked for Papco in 1978, and again in 1979–1980; that Brown ''was terminated on both occasions in a reduction in force''; and that Kelly had ''concluded that in view of that, Papco had no objection to Brown's referral by the Union and that Brown should not be on a not-for-hire list.'' Id. at 1276.

Moreover, the December 22, 1984 Martin letter was previously determined to have *resulted* from McMahan's contact of higher Papco official *after* Respondent Union's then counsel had been informed of Kelly's above statement of Papco's position. It is clear enough that the December 22, 1984 letter was found to be a result of McMahan's contact of Papco official, with a previously found persistent McMahan purpose to discriminate against Brown. Id. at 1279.

Walker recounts that he had also reviewed a file entitled ''International Association of Bridge, Structural and Ornamental Ironworkers, Local 601 vs James L. Brown'' which had detailed what had happened on the job. However, Walker has testified that *he never at any time saw any related decision from a court, or by the NLRB, saying that that thing (in this context, clearly the McMahan solicited December 22, 1984 letter of Martin) had been overturned*. Walker has otherwise asserted that it was not unusual that that (Board or court decision) was not in Brown's file, because there were a lot of things that were missing from files that the Union had (maintained) on most of the employees. Walker noted that McMahan had (maintained) the files back in 1984–1985, until McMahan went out (of office) in 1985 when he went to jail.

In rebuttal, Brown then testified that the decision rulings and notices in the above decisions, and particularly the last decision were posted on two bulletin board locations in the hall for years beyond any normal 60-day notice posting time. Although Brown indicated that one (notice) may have been taken down after Phillips came into office, Brown testified *that over his repeated objections*, both McMahan and Phillips had left Board notices on the Union's bulletin board in the meeting hall (beyond normal posting times) as a continuing discriminatory measure against Brown, namely, so that all of the Union's members on appearing at the hall could see Brown had brought charges against the Union. Brown asserted that the (last) decision was posted on the hall board as late as on March 8, but he didn't know whether it was on the board on March 20, when Walker took over.

Walker testified in rebuttal, it wasn't posted, reaffirming he had never seen the decision, and asserting specifically, that there was no decision on the union bulletin board when he took over. Lee corroborated Walker, in that Lee testified that he didn't recall a decision ever being posted; but, Lee also confirmed Brown that rulings (I find) notices, naming Brown were posted. Lee didn't specifically recall when he had last seen them up. Lee related that he may have seen them in 1988, but couldn't recall as to 1989. However, Lee then testified significantly, *he knew that they were up for a long period of time*.

In regard to likely timing of initial posting of the most recently posted notices, I take official notice that the Board's decision in the above (last) case against Respondent Union reported at 276 NLRB 1273, issued on September 30, 1985; and (only) that an Order of the Fourth Circuit Court of Appeals enforcing the said Board's Order was filed on May 27, 1986.[2]

Walker relates otherwise that he had also reviewed another letter from a different company barring Brown from unrelated other jobs. Brown asserts that he had had no knowledge of there being any other letter in Brown's file barring Brown from a job. Walker testified that a G&R Plant Maintenance, Inc. (G&R) letter (R. Exh. 3) by Hubert Gray to Phillips, dated March 2, 1989 (apparently received while Phillips was still business manager) was also found in Brown's file.

The G&R letter in evidence states in pertinent part that due to past experience with the named member, that G&R requests that Brown not be referred to G&R's Gifford Hill jobsite. Brown did not know G&R Maintenance, but Brown acknowledged he was injured in the past on a Gifford Hill jobsite. Otherwise Brown asserts he did not know that a G&R Maintenance had barred Brown from working for them.

a. *The April 5 Brown–Walker conversation*

Walker asserts that he called Papco the same day that he turned Brown down in sending him out there (at best) the more likely at the time of issuing the referrals, but he didn't get (contact) anyone that day because Papco's office still hadn't been set up yet. On April 5 (Wednesday), Brown came to the hall and talked to Walker in his office about the Papco referrals. Brown recalled that he initiated the conversation. Brown asked Walker why he was not referred to Georgetown, and why Phillips and Danny Steff and certain named others had been referred to the Georgetown job ahead of Brown.

[2] The General Counsel offered the relevant Judge, Board, and (unpublished) court decisions and orders which were received in evidence as G.C. Exh. 6. As stated at hearing, in deference to that court's presumed wishes in classifying its decision as one to be unpublished, I do not cite from nor otherwise rely on its contents herein. However, I do rely on the evidenced date of filing of that court's related order, for its likely relevance to the Respondent's posting of notices as previously ordered by the Board and then enforced. (In passing, I note however that G.C. Exh. 6 as it appears in the General Counsel's Exhibit file does not contain the underlying Judge and Board decisions. I have thus taken official notice of those decisions as they appear in the above-referenced Board's bound volume.)

Testifying from memory, Brown seemed to concede on Phillips, in explaining he thought Phillips had probably signed the book before Brown did, but that Steff had signed it after Brown did. Brown otherwise recalled one of the Burrows boys was on the list. Brown was not sure about whether Larry Simpson had also signed the book or not; but he did not believe that Jean McMahan (whom he thought was one of the original ones that went down there) was on the book. Be that as it may, Respondent Union in any event does not contest that Brown was not referred to Papco's Georgetown jobsite, or, that others with less chronological (list) placement were. (Indeed, since 1984, Brown has never been referred by Local 601 to a Papco job.)

In their April 5 conversation, Walker told Brown that the Company (Papco) had requested Phillips and Steff by name. Brown asked Walker if he had a letter requesting them. Brown told Walker that was the procedure. Walker told Brown that he didn't have a letter, but if need be, he could get a letter from Papco requesting that, as Papco had called for Phillips and Steff by name.

Brown testified relatedly it is not a practice that he is aware of that the Union will accept a request for referral of individuals by name without it being in writing; but Brown further related that such was his understanding stemming from the 1985 decision where (so he understood) the NLRB had ruled a name request had to be requested by letter. Neither as evidenced practice, nor any such Board-stated requirement appears in that case. Moreover, certain Brown testimony regarding his own referral to a job where an employer (Huber) had called him at home, more supports conclusion the Union gave Brown referrals without the Union's requirement of a letter in writing from Huber as a requesting employer; and, even though in that instance there was some dispute over the employer's direct call of Brown.

Brown's version of the April 5 conversation continues that Walker had then explicitly told Brown that Brown was not referred because they (the Local) had a letter from Papco stating Brown was not for rehire on the Papco job. Brown was firm (and is credited) that Walker was the first to mention that letter. Brown relates that at that point he tried to explain to Walker that that letter had already been brought up and ruled upon in a previous case before the NLRB, that it had been there considered and proven that McMahan had solicited the letter from Papco. Brown is sure that he had mentioned that there had been a previous NLRB hearing that involved that letter. When Brown did so, Brown's version is that Walker had then informed Brown that he knew all about it; that when he took over Phillips had alerted or told Walker about it; that Walker said he had seen all the paperwork or all the papers on it, and the letter in the file; and, Brown was not for rehire at Georgetown.

On cross-examination, Brown acknowledged that he didn't know which papers Walker saw, or what documents Walker had read; nor did Walker tell Brown which paperwork he had seen, and which he hadn't. However, Brown was sure Walker did say he saw a letter from Papco, and it had said, Brown was not very high (but in context, and clear elsewhere, not for hire). Brown knew of only the one letter, McMahan's solicited December 22, 1984 letter; and, Brown also believed he had told Walker that letter had been reversed or nullified, or words to that effect, but didn't remember his exact words. Brown acknowledged that he had never told Walker Papco had changed its position and reversed the letter or withdrawn it.

Walker has categorically denied that he ever discriminated against Brown. Walker notably testified, that Phillips had never told him that there had been a Board decision which issued involving Brown; and also (though not without some strain in credulity in this respect), that nobody, other than Brown, had told him about a Board decision involving Brown. Walker asserts he didn't talk to members about Brown's reputation, nor his work, or anything else.

b. *Walker's efforts to get Brown on the Papco job*

Walker does relate, and in general more convincingly, that he subsequently put forth a great deal of effort in terms of attempts to get Brown back on, or employed at the Papco job, which included personally talking to, and having others talk to Faulk, and to Martin (though in the latter regard, I do have certain reservations as to timing of an initial conversation as Walker recalled occurred between Walker and Martin, discussed further below). Walker otherwise states he made all his efforts because he represented Brown as an ironworker.

Walker's recollection is that Brown came in the next morning (I find), April 5. At that time Walker told Brown that Walker wasn't going to be able to send Brown to the Papco job. When Brown asked Walker why, Walker told Brown of the letter Walker had found in Brown's file. Walker's (at least) initial recollection was that Brown had told Walker that there was a court decision that overturns that letter. Walker initially related that Brown never said anything about the NLRB, though he guesses Brown had meant the NLRB. Walker said fine, bring me a copy of it in the morning. I don't have that. According to Walker Brown said he had it at home; and he would bring it to Walker, but Brown did not bring it the next day, nor did Brown ever bring any decision in thereafter.

Contrary to Brown's assertion that it (the decision) wasn't again brought up, Walker testified that they had talked about it again; that he knew that at least three times he had asked Brown to bring it to the hall; and, Brown had said he would. Indeed, Walker then related his recollections of some rather persuasive supportive details, viz., that Brown was staying in Charleston, but that he had another home in Darlington; and, that Brown had told Walker he couldn't find it there (Charleston), and, that it was probably in his home in Darlington. Walker related that Brown went there, but Walker never got it.

Finally, Walker recounts that he had also asked the Union's general counsel, had he ever seen anything like that (a court decision overturning the letter), and that (different) counsel said no. So Walker asserts (at the time) he took it that there wasn't anything; that Brown was pulling his leg.

At some point during this general period of time, McMahan was in town, but Walker had a hard time contacting him. Walker explained McMahan had a car that was in his name but that belonged to the Local, and they (only) got that turned around 3 weeks ago. Walker had called McMahan 5–6 times; and McMahan would never return Walker's calls. One day, when Walker finally did get to talk to McMahan, he questioned McMahan about it. Walker recalls that McMahan's answer was, I don't know, its not my job, a real smart answer.

Brown affirmed that when he spoke with Walker on April 5 about the Papco referrals, Walker probably had asked Brown to bring in some documentation; and, that Walker did ask if Brown had any documentation to show that it (the letter) had been overturned. However, Brown was sure he mentioned that there had been a previous NLRB hearing that had involved that letter.

Brown also confirmed that Walker may have asked Brown to bring in the NLRB decision; but contrary to Walker, Brown asserts he didn't say he would bring it in. Rather, Brown relates that he told Walker there should be a copy of it in the Local Union; and, that they would get a copy of the same thing he would have gotten from the NLRB. Brown further relates that Walker did not at either that time or any other time ask Brown for any other documentation. Finally, Brown asserts that Walker never asked Brown for the Board decision again. Indeed, Brown states (generally) that he never tried to get Walker a copy.

However, Brown has also related on occasion, at best confusedly, if not disjointedly, that at the time that Walker had asked him for the decision, he didn't have the decision anymore; that it was several years since, and he didn't think he even had a copy; thought he had discarded all that stuff; but, then repeated he had never tried to get Walker a copy. I credit Walker's recollection that on more than one occasion they had discussed Brown bringing in his copy of the Board's decision for Walker's review.

Walker recalled that (in their April 5 conversation) Walker otherwise told Brown to let Walker see what he can do with this thing; that he *was going to call* the Company and try to get Brown back up there; that Walker had asked Brown to promise him Brown will go up there and not create any problems; and, that Walker would do everything he can to get Brown back up there. Walker asserts he not only did that, but he went out of his way to try to get Brown on that job.

Brown later did recall (though not sure about any exact date) that Walker in either that conversation or in another conversation had told Brown that Walker had checked with Papco to see whether or not they had lifted the ban on employing Brown. Brown didn't know anything (more) other than maybe on one occasion Walker told Brown that Walker or maybe Lee or (acting business agent) Scott Lapman had either gone down there or sent someone down there to try to talk to them about it. Though unclear as to exactly when, Brown did recall there was some union notice from Walker and/or others reporting that Papco would not hire him. (Brown added he didn't remember whether Walker said that Lapman had gone down there, or Lapman told Brown that he had gone down there to see if he could reverse the decision.) Brown notably testified in any event, that if Lapman went, it went on Walker's record (in context, Lapman went on Walker direction). So, Brown was fairly sure in his mind that they did try. In the end, Brown summarized, Brown thought Walker had done everything within his power to try to get it okay; and Walker had tried to do everything he should *to get Brown back.*

Otherwise lead to subject, Brown related that he had already looked at the 30-day list; and that he requested copies of page 60, 61, and 62 of the 30-day book which would have indicated that he was on the out-of-work list and ahead of some of the people that were (sent) on the job. Walker told Brown that Brown could look at the 30-day list, but refused to give Brown copies, though Brown asserts he had offered to pay for the copies. However, as noted, Walker does not contest that Union did not refer Brown, but rather defends its action in not doing so.

Moreover, it is notable that Brown has also testified that Brown had no reason in this period to believe that Walker had any grudge against Brown or was out to harm Brown; adding significantly, that he never did, and still don't. Brown even more revealingly later explained that this was not a hostile situation. Summarizing that he thought there was a mess to begin with, Brown significantly stated his observation that he thought that they (clearly Walker) *were listening to people that had some things against Brown.*

Brown has also readily acknowledged that he has indicated to Walker that Walker's trusteeship in running the Union had led to improvements that Brown approved of personally, though also at this time apparently not wholly, as is indicated by nonmeritorious assertions Brown had made in affidavit on changes Walker had made in the referral system on May 23, below.

Brown's testimony vacillated however, and otherwise was unsure on whether or not Walker had also told Brown on April 5, or later, that Walker had already spoken by phone with the Company and that the Company was still adhering to the December 22, 1984 letter; and, they were refusing to take Brown back.

Anything of record to the contrary notwithstanding, it was (I find) more likely after April 5 that Walker had first been able to contact Faulk by phone about Papco's employment of Brown. According to Walker, Faulk told Walker he had strict instructions from his boss, James Martin, president of the Company, that Brown was not to be back on this job.

At the time of first referral of men on April 4 or 5, Walker knew that there were going to be subsequent referrals, with Papco adding men in the days that followed. Walker testified relatedly that he didn't just send Brown out at that time because he was in a hostile situation. He had taken over a Local Union from members that didn't want Walker there to start with. When he took over, there were (only) 10–12 (of 47 available) people working (locally); and, Walker's ambition was to get them all to work, as soon as possible. Walker, in a self-described judgment call, recounts that he just felt from everything he had heard and read that he would be rocking the boat and creating big problems if he sent Brown to that job. In that respect, other Walker testimony then takes on added significance, that during his 15 years as business manager of Local 5 in Washington, D.C., there never had been a time that he had tried to get an ineligible guy back on and had failed to get him back on—until this time.

Following the Faulk conversation above, and recalled as occurring within 5 days of his (initial) refusal to send Brown, Walker asserted that he first called Martin, Papco's president. Walker's recollection is that he then asked Martin if there was any possibility, or anything Walker could say for Martin to give Brown another chance to be on that job. Walker recounts that Martin told Walker on that occasion, hell, no; and, evidently you don't know the guy. Walker said he met Brown a couple days ago, and, he didn't really know him.

Walker relates that Martin then said, ''Well, I know him, and there ain't no freaking sic way, that Brown's going back on that job.'' Walker relates that he then stated to Martin,

''there's talk that there's a court decision or an NLRB hearing decision that that thing (letter) was overturned.'' Walker also has Martin reply at this time, ''I don't give a damn what court decisions there are, they don't apply to Papco, and that guy is not coming back on this job.'' Thus, according to Walker, at this early time, Martin was very emphatic about not employing Brown.

In contrast, Walker has also related that he subsequently pursued a Brown hire locally. I also note presently that Walker had a later conversation with Martin, that he then related (only) as being the same thing. However, certain statements attributed to Martin in the first reported conversation, which would be a conversation placed as occurring in the early part of the week beginning April 10, are both inconsistent with Walker's continuing efforts locally at that time (below); and are (at best) in some respects, far more consistent with later events.

The General Counsel has also introduced in evidence Walker's letter of May 24 to International's counsel (G.C. Exh. 7) wherein Walker marshaled certain relevant observations, including report of a Walker conversation with Faulk on April 25, below, but in which Walker makes no mention of any prior conversation held with Martin. Moreover, as we shall see, Lee's recollection of his first background substantially inconsistent with Walker's above account of his claimed early April contact of Martin. Martin was not called as a corroborative witness in this (or prior) proceeding. For the above reasons and other reason's appearing hereinafter, I simply am not persuaded by, and do not credit Walker's account of an early approach to Martin on Brown's employment. Nonetheless, it is clear that Walker had both pursued trying to get Brown back on the Papco job; and, in the interim that he had referred Brown out to other jobs.

Walker thus relates more consistently and credibly that he had next sent temporary Business Agent Scott Lapman out there within 10 days of Papco hiring their first people, thus about mid-April. Walker instructed Lapman that he was to do everything he could to get Brown rehired. After Lapman contacted Faulk directly, Walker recalls Lapman reported back to Walker that in Lapman's opinion it wasn't going to happen, that it was impossible; and, that Walker was not going to get Brown back on the Papco job. (Lapman did not testify in this proceeding.)

On April 26, Walker (next) personally drove to the papermill jobsite in Georgetown, South Carolina. Walker talked directly to Papco's superintendent, Faulk, on that occasion, but (again) to no avail. Walker recounts this time he tried to play on Faulk's mercy. Walker said of Brown, ''you know, the guy's a nice enough guy—what the hell—why don't you give him a shot; and, I'll explain to Brown that if he comes out here he's to keep his mouth shut and work; and, if he messes up, then, you have the right to fire him, and that'll be the end of it.'' Walker asked Faulk, ''why don't you give him one more chance.'' Walker said Faulk simply replied, ''I've got a boss and he's instructed me what to do, and that's the way it's going to be.'' (Faulk did not testify in this proceeding.)

After April the Union referred Brown periodically to 1-day shutdowns with Huber Construction Company (Huber) out at MacAlloy, South Carolina, where Huber made slag. (Every Wednesday Huber would have a shutdown, which could last 10–12 hours.) Initially, Brown didn't think that he was referred to any other contractor except Huber before referral (allegedly belatedly) to Beasley on August 14, below. However, on cross-examination Brown acknowledged he was referred to Combustion Engineering (I find) on April 26.

Brown was referred to Combustion Engineering through the Boilermakers. Thus, the Boilermakers' business manager called Walker and asked for six or eight men. Lapman and Walker got the men together, and included Brown; and they sent the men over to the Boilermakers. Walker has testified (without contradiction) that Brown stayed on the job only 1 night and a day, before he quit. On April 27, Brown filed the instant charge against the Union for its failure to refer him to Papco.

Walker recalls that on May 25 he again spoke to Martin about Brown. Walker relates simply that there was no change in Martin's position. Walker's recollection was that at this point Walker told Martin the Union would need a new letter. Walker recalled he later instructed Lee to call Papco and tell them that if they weren't going to hire Brown, the Local Union needed another, updated letter since that (December 22, 1984) letter was so old. Walker recalls that (union request) went on for probably 4 months, maybe longer.

Lee however contrarily related it must have been *in July* that Walker instructed Lee to call Martin and clear the air on this old not for rehire letter that was in Brown's file, *to determine if Martin's intentions were still as they were in the past*. Lee recounts he placed several calls with Martin's secretary, requesting *unsuccessfully* that Martin call Lee back.

Walker would explain any delay in his following up on a request for a new letter in large measure because at this point Walker was not only running Local 601, but International had appointed him the president of District Council of Southeastern States, with responsibility for the care of (then) 10 locals, including Local 601, and an area that covered the States of Florida, Georgia, South Carolina, and Alabama.

Walker's version of what happened thereafter is that after being reminded of it by Lee, Walker had instructed Lee to call Martin and to tell him that if he didn't have a letter in the hall's office in 10 days, that Brown would be one of the people (referred) in their next call. Lee reported back to Walker that Martin very emphatically told Lee that there's no way you're going to get him back on. When Walker inquired of Lee whether Lee had told Martin that the Union had to have the (updated) letter, Lee said he did, and that Martin said he would have the letter to them within a few days; and the letter did come in then.

In contrast however, Lee's recollection was that after a period of several weeks or so Walker had again called Lee, and Walker told Lee that they had to do something about this. Lee also recalled (again consistent with Lee's first recall, and not Walker), that Walker instructed Lee to tell Martin that *he had to make up his mind to clarify the situation, or that they were going to send Brown to work*. Lee recounts that he again tried to reach Martin, and this time left the message with Martin's secretary *that he was going to have to tell ''us (Union) what he wanted to do*.''

Martin got back to Lee by phone. Lee relates (this time) that Lee then told Martin *just what he had been instructed to say*, namely, that *by Walker's efforts to get Brown on the job and by talking to his personnel on the job, ''we [Union] realized what Martin's wishes were, but that we felt like we were in a position that we needed some clarification*.'' Lee

continued, without objection, that Martin then got irate. Lee couldn't remember verbatim exactly what Martin said, but recalled he was very loud; and that there were several expletives and colorful language involved.

Lee summarized, Martin was emphatic that under no circumstances as long as he drew breath and was president of Papco should Brown be allowed to set foot on International Paper Company property. Lee relates that Martin went into an alleged Brown assault against Max Manasco (seemingly the supervisor involved) back in the late 1970. Martin then said he very definitely would not allow Brown on the property; and ''if we [Union] sent Brown, Martin [Papco] would not hire him.''

Lee recounts that he didn't have an opportunity to say too much in the conversation because Martin was really off the handle. Lee also recalled that during the conversation Martin told Lee several times that he had written this (December 22, 1984) letter; that it wasn't for a year or for 5 years or anything like that; the letter was for life.

Lee recalls he then said, ''well, I don't know''; and he then just told Martin what Lee's orders were and ''*what we [Union] had to have to clarify the situation so that we knew without any shadow of a doubt what his position was.*'' In the end, Martin agreed he would put a new (union-requested) letter in the mail.

The new Martin letter to Lee (R. Exh. 4) is dated August 15, and provides:

> Please be advised that [Papco] Inc. does not intend to employ the above-named individual at our Georgetown project, or any other job. Because of gross insubordination during which time the above person struck a [Papco] salaried supervisor, we request that he not be referred to our project.

The complaint does not allege there was any further unlawful failure of the Union to refer Brown before July 24.

4. Interim changes in the referral system

Walker sent a letter dated May 23 (G.C. Exh. 3) to Brown (and all members) which set forth certain newly instituted referral procedures as follows:

> This letter is to advise you that effective immediately, you will be required to come into the hall every Monday morning at 7:00 a.m. for job call. The ''Out of Work'' list will be based on those who show up. If you live 30 or more miles from the Iron Workers Local Union No. 601 hiring hall, you may call in. If you are working, please call and advise what company you are with and the job location.
>
> You are further advised that the Local is to have a current address and phone number so that you may be contacted for work.
>
> . . . .
>
> The above detailed information will be strictly adhered to and if phone numbers and addresses are not correct, and you don't either come into the hall or phone, your name will be removed from the ''Out of Work'' list.

Walker's understanding was that Local 601's prior (log) referral system had its origins in a court or Board proceeding. When Walker took over he had just gone through a similar (hiring hall) situation with Local 272 in Miami; and he had put a court-approved hiring hall system in place there. After inquiring of International's general counsel, whether he could implement the same hiring procedures in Local 601, Walker did so about 4–6 weeks later.

Brown relates and the Union accedes that as a result of the May 23 letter the Local Union effectively did away with the 30-day log, and used only a daily log. Thus under the new rules that were then implemented the old 30-day book was wholly eliminated. Local 601 continued to essentially have a daily sign-in sheet for the members to come in and sign as before; and, when the day's log was exhausted, a prior day's log was (successively) used, as needed, to fill all referrals. However, to accommodate complaints of member-workers living in Columbia, South Carolina, that they couldn't get there to sign the daily sheet, the new system provided that anyone living 30 miles or beyond could call in and get their name on the list. (The time the employee called in was recorded.) Brown lived in Charleston, within 30 miles of the hall; and, he did not qualify to call in.

The time the hall opened for issuance of referrals was also changed from 8 a.m. to 7 a.m. Walker explained that this was done in order to thereafter get those referred on Monday morning onto the job at starting time.

Brown compatibly recounts that the Local thereafter used 45 loose-leaf sheets of mimeographed paper (in place of prior daily worklist) that provided a place for columnar data entry of (I find) an applicant's name, phone number, but also columns for remarks and designation of four different qualifications for ironworker jobs. The list made provision for an employee's entry of any remark desired; and, for the employee's designation of his individual qualifications in R, S, F, and W, or as is more definitively revealed by the record provided for the individual's check of qualification in Rebar (rods); Structural (which included connector work); Finish; and Welder (including specialized and/or rare heli-arc welding).

The above Walker initiated rules also explicitly stated that an iron worker *had to indicate his qualifications on the sheet*; and, that an employee would be referred only according to his journeyman classification and his designated qualifications. Walker explained that a journeyman ironworker supposedly does it all, but that's not always the case. (General Counsel's witness Kent's experience has essentially corroborated Walker in more material regard, namely, as to bridge work, below.)

In contrast, Brown relates he felt he could do it all. Brown asserts that he would usually just draw a line through it (all the classification columns) asserting he did so to check all of them, as he felt he was qualified to do any phase of it. However, in that regard, Brown had alleged the changes effected in the referral system were illegal.

Walker relates (seemingly) that under prior hiring hall rules if you declined a job you were supposed to go to the bottom of the list. However, he also testified that he had always been of the view that a man's refusal of a job was the man's prerogative. Walker testified that he has never done that (dropped a man to the bottom of the list when he refused a job) in the 18 or 20 years that he has been referring people.

The General Counsel concedes Brown's charge (or affidavit), to the extent it raised allegation of changes being illegal, on investigation, was determined to be without merit; and, that the changes made in the referral system are not subject of any allegation in the present complaint. Thus, the recent changes that Walker made in Union's referral system are not presently an issue before me or the Board.

5. Case 11–CB–1793; the Beasley bridge job

a. *Background*

CRC, a nonunion general contractor, was awarded a contract to construct the Mark Clark Expressway Bridge (bridge) over the Cooper River (apparently) as a continuing, but separate, part of an ongoing highway construction job. In any event, Beasley initially bid to erect the steel on the Bridge, but CRC elected to try to erect the steel themselves. Walker concluded after seeing them try that CRC didn't have the necessary expertise to get the job done.

Walker relates that the Union had watched the Bridge job real close. CRC set the first piece of steel up, which involved balancing some 200–300 tons of steel on a 12-by-12 foot 18-inch pier, about 150 feet in the air. As Walker described it, CRC put the first piece of steel up on top of that pier; and, then it just seemed like everything stopped. Though Walker could only observe the job from a distance, Walker concluded CRC had problems. Walker researched the records and found out that Beasley had bid the job originally. Walker then contacted Beasley, and two other union contractors; told them that CRC had problems; and, urged the union contractors to contact CRC immediately. After 4–6 weeks (and at least by July) CRC had subcontracted the Bridge steel erection to Beasley.

Called as a witness by the General Counsel, Joe E. Kent, Beasley bridge project superintendent, confirmed that he felt there was poor management in erecting the steel, as CRC had started back in April–May, and CRC had only one stage of a couple hundred tons of steel up in that length of time.

Kent has been in the business for 31 years; and, he has been working on bridges for the last 10, 11 years. Kent is a journeyman ironworker; and he is a member of Savannah Ironworkers Local 709. Kent confirmed Beasley contracted with CRC to provide the labor to erect the steel; and, that he laid out the job to use union labor, to which he is committed.

Kent also confirmed CRC had kind of messed the job up (on the ground). They had some of the iron loaded, i.e., made up on the ground in sections, in parts of sections; and in pieces. Kent knew he would have to straighten that mess out, raise it, and get it connected first.

Kent planned from the start to use union labor; and, he knew he would get all his men through Ironworkers Local 601. In that regard, Kent knew (under the master agreement) he could bring in regular Beasley employees for up to 40 percent of the required work force, though he also knew he would have to have those he brought in referred to the job through the hall. The remainder were to be referred from the Local hall.

(1) The prejob conference

Kent attended a prejob meeting in mid-July with Lee and John Shelet (but not Walker, as Lee and Walker confirm, below), at the Holiday Inn, in North Charleston. Shelet is employed as a deputy director of the Institute of the Ironworker Industry, or ''Triple I'' as it is known, a joint union-management organization that (seemingly) promotes Ironworkers (trade or industry). Kent otherwise recalled credibly that they mainly discussed in general the type of people that Beasley would be needing; how many; and the (anticipated) length of the job.

Thus Kent informed the group that the contract was for a year; that he worked four 10-hour days; and, that he hoped to be out in 9 months. (Kent explained at hearing that Hurricane Hugo had set them back to the point the job was only about home, or done at time of present hearing.) Kent recalled that he also informed Lee that he would be bringing in Ellis and Fair as his key people; and, Kent testified initially that he had said *the others best be connectors*.

On other occasion Kent related that when he called the hall, he called for connectors and bolt-up people; that he may not have then specifically said or stipulated *to Lee*, that he needed four or five or six connectors; and, that he might have told Lee he needed some ironworkers, but Kent then reiterated that in a roundabout way he had said he needed some men that's going to have to be connectors. Kent otherwise testified that Kent had figured the Union would know he needed connectors, because on this job, that was the first thing that he would start doing, more or less.

Walker relates in general that he had constant conversation with Beasley's president about Beasley's hiring needs for the job. However, Walker was out of town at the time the Beasley prejob meeting was held. Thus Walker relates that he did not attend the prejob conference as had been (erroneously) recalled by Beasley's superintendent, Kent. However, Lee reported on the meeting to Walker that very same night.

Lee confirmed that at the time the Beasley job came into town, Lee was business manager and responsible for the Union's dispatch of men. Lee recalled he had first learned of the Beasley job in late June, early July, right after Lee had come into office by Walker appointment; and, that the Local Union had probably received the call from Jay Rollins, president or vice president of Beasley's bridge division. In any event, Lee confirms that he represented the Union at the prejob conference that was held before the first dispatch of men to the job. Apart from confirming that Shelet was also present, Lee has more definitively recalled that Rollins, and Superintendent Kent were there for Beasley, as was Gill Bailey, the timekeeper and engineer on site.

Lee essentially corroborated Kent that at the prejob conference, they had discussed more the quantities (of men needed), than specific type. Lee thus recalled that Rollins was concerned with the Union's ability to man the job; and, they said basically, that this is a different sort of work; that it's not every day that a bridge comes to town; though there was some concern generally stated also as to whether Local 601 would be able to supply the type individual that would be needed to man the job.

(2) Walker's meeting with Kent

Walker recounted credibly that when he got back in town a day or so later he went by the job and spoke directly to Kent. Walker recalled that at that meeting Kent had told Walker that Kent wanted five connectors. Kent's request

wasn't deemed unusual by Walker, as, from his own experience, Walker would have done the same thing, for reasons that are more conveniently to be addressed further below.

(3) Kent's first phone call for men placed with Lee

Lee supports Kent and Walker recollections above that Kent had initially wanted all or five connectors. However, Lee does so on the basis of certain Kent statements made to Lee that Lee has recalled were made in a first call (for men) phone conversation that Kent later had with Lee. Lee recalls that the first call for sending people out to the job came in over the phone on or about July 24.

Lee is sure he took the call from Kent; and, Lee confirmed that it was for (all) connectors. Thus Lee recalled (credibly) that he had questioned Kent on this because ordinarily Lee did not receive a call for all connectors; and Lee relates that Kent had then explained to Lee the reason why he was calling for nothing but connectors. Thus Lee relates Kent had told Lee that the (initial) work that they had to do was cleaning up behind CRC; and, from time to time, it would involve sending the whole crew up to do connector type work. Kent told Lee that he wanted every man in that gang (clarifying) *just to start with*, to be able-bodied to go up and down as needed. From his own experience, Lee knew that they (Beasley) would also be needing quite a few bolt-up hands, and a yard crew (later).

(4) The connector work

In explaining why he had readily understood Kent's initial request for five connectors, Walker related that connectors are generally young and agile; and (when Walker managed a job), he felt that he could always get the hook-on man and the bolt-up man, but that if he (initially) got five connectors, then if one guy misses time and lays out for a problem, he had another connector he could send up there. (Kent confirmed generally that he preferred younger, quicker men to work around the steel when connecting.) Moreover, Walker also recalled that Kent had said (of this job) in their conversation that in a lot of cases with the 100, 150-ton lifts (to be made) that all the men might hook on the barge, but then he would send them all to the top; and that Kent had said he wanted people that could get up there.

Kent confirmed first generally, we have some awful big steel and we put it together in sections that can go as much as 175 tons. Once that piece of iron leaves the barge hooked onto this big floating rig out there in the river, it goes topside to make a part of the bridge. Connectors are men working up on top and on the bottom to make (connect) the bottom and the top cords of that bridge together. The bottom cord of the bridge was roughly 165 feet high, give or take a foot or two with tide and what not, with roughly another 60 feet to the top cord. The men (working) on the top stood on the bridge itself.

The (raising gang) men working on the bottom were on a barge, hooking on, and running a tag line on the piece of iron (to be raised). A tag line is a 1-inch manilla rope tied onto the end of the piece of iron. The tag line is secured to a part of the barge, and it is gradually fed off to keep the piece of iron straight, to guide it, and to keep it from spinning in the air. In general, once that iron gets in the top, it's up to the (raising gang) foreman what the bottom men then do. If a foreman doesn't have anything else on the barge for them to do (e.g., further assembly or making ready of iron), the foreman can send them to the top to help as connectors, to help bolt up, or to work with a yard crew (below).

Walker had personally worked as a connector for 10 years. Walker has testified categorically that there is a practice in the industry on connectors' work; and it is, ''It's a young man's game.'' Walker compared the connector work in building and bridge work as follows: (a) In a building you might put up a column, an H beam that's 8 or 10 inches square, and the connector might have to climb 60 feet to the top, to make, or connect, another beam going from that column across to another. (b) In general the structure of a bridge is composed of a top, bottom, and a diagonal cord. Walker recounts that in a bridge the top cord is put in and you hand (in context hang) a diagonal down from the top cord.

Walker then testified a connector might have to get on that diagonal and slide down to the bottom of it to make the bottom cord with nothing stopping him when he gets to the bottom other than his strength; and then maybe put a plug wrench in the hole and stand on the plug wrench to make that bottom cord. Walker repeated, with a firmness evidencing both his own personal experience and his conviction (at least on the described connector work) that it's a young man's game.

Walker continued that on this particular bridge job they also had to install 128,000-inch-and-a-quarter body bound (no tolerance) bolts. Connector (part of such) work involved driving a pin in almost every hole in order to get the bolt in. Walker relates the connector used either a 10-pound mallet, or ''hell dog'' (riveting gun) to first drive pins to align the steel. Walker otherwise described the particular work in question as involving driving an inch and a quarter pin in structural steel that's like 9 inches thick, in temperature (then) of 100 degrees, and the steel even hotter. However, not all such pin and bolt work on high is done by connectors. Some is done by a separate bolt-up crew as described by Lee; and in different manner as related by Kent.

Lee confirmed that connectors work in a raising gang; and, the raising gang erects the structure in sections or pieces. Lee recounts a bolt-up crew comes behind the raising gang, and sticks the bolts. Though they may also drive pins to align pieces and stick the bolts; they use impacts to torque the bolts to a specific torque. Not only is bolt-up work distinguished from the connector work, but bolt-up work may be done on the ground as well as on top. The raising gang foreman, typically, will send a list of what he wants next to a yard crew, which may be to put several pieces together (on the ground) into a section, or it just may be (a call for) so many pieces.

On this job Lee thought that the majority of the steel came in on trucks; and, that it was unloaded at the MacAlloy Steel Mill location, where Beasley's (eventual) yard crew worked and where the office is located. A yard crew has responsibility of unloading trucks as they come in, sorting the iron (pieces), putting it in locations and/or assembling it (in sections) as needed. They are responsible for filling the (raising gang's) lists. From there the iron in pieces and/or assembled section is loaded on a barge and transported to the bridgesite for raising and connection.

Kent has also seemingly differentiated connector pin and bolt work with the (high) pin and bolt work of bolters. Thus, Kent described that bolters, more or less, have a float (which is a 4-foot by 6-foot OSHA standard piece of plywood with slats nailed around it) to work off of. A float is large enough for two people, one to stick a bolt, and one to put the nut and washer on. Materially, Kent otherwise confirmed that during that first period he wanted every man to be able to go up and connect.

Moreover, any issue of the number of certain requested key personnel aside, Kent has confirmed materially that all the other ironworkers referred and employed during the first 10 days all did connector work because Beasley didn't have anything else but connecting work to do at that time. Kent thus testified that during that first week connectors were up on the top and bottom cord connecting the side of the bridge which consisted of a top, bottom, and a diagonal cord.

Walker testified compatibly, that he knew that there were going to be other ironworker referrals on the Beasley bridge job because Kent had also told Walker to give him a little chance to get the problems straightened out, and Kent would be hiring people right along to do bolt-up and yard work. Walker testified that yard work is viewed as somewhat easier work; and they always tried to save that for older members, that's pulled their time. In any event, Walker, Lee, and Kent (I find) have fairly and credibly described the initial bridge work required on this job, particularly because of the status of the job when Beasley took over, as at first primarily involving harder connector work.

b. *Lee's July 24 referrals*

It is uncontested that on July 24 Brown went to the union hall and signed the daily out-of-work list (U. Exh. 1) in fourth position, behind Tommy Steam, Zander Burrows, and Bill Luther. The daily referral list then in use stated explicitly, ''You must indicate your card classification on sheet. You will be referred only according to your Journeyman classification and or qualification.'' The daily work list for that day provided the R, S, F, and W columns for checking, which the parties stipulated stand for: rebar, structural (which I have found materially includes connector), finish, and welding. Though Brown asserts he can do all that work (at least) on July 24, Brown did not check or even draw a line through any of them, as Brown otherwise asserts he did regularly.

At that time, Brown knew that Beasley had obtained the bridge job over the Cooper River. Insofar as bearing on required connecting, Brown vacillated somewhat in stated understanding of the arrangement. Initially Brown related that Beasley was a subcontractor for CRC. Brown then stated he knew Beasley wasn't really starting new, that they were taking over from another (nonunion) contractor (CRC) who had started the work. Brown later acknowledged Beasley took over on the contract following CRC; and, that Beasley was using their (CRC's) equipment. In material time, Brown knew that Beasley was going to be calling the hall for men; and (I find) he reasonably knew that Beasley was going to immediately need (at least) some ironworkers to do the physically hard and dangerous connecting work described herein.

Brown was fourth in chronological placement on the July 24 daily out-of-work list. Apart from two men (James A. Ellis and Charles E. Fair) who were brought (permissibly under the contract) from outside the area by Beasley's job superintendent, Kent, and referred out that day, the Union also referred five men out that same day (Friday, July 24) to the Beasley jobsite, four of whom Beasley hired on July 26 (Monday), and one on July 27 (Tuesday). (I find that it is most likely from credible evidence of record that Curtis W. Barnette was referred and was to report at the same time, but reported a day later.) The five, with actual hire date shown are:

July 26	*July 27*
William R. Burrows	Curtis W. Barnett
David A. Bush	
Laurice W. Martin	
Elwood Wayne Mills	

Walker relates that Lee, who knew the local men's capabilities better than Walker, had actually made all the initial referrals to the Beasley job. Walker added that he supported what Lee did 100 percent.

Walker otherwise candidly conceded that Walker had also wanted young men to be referred initially for that job. Walker testified that though he didn't make the final decision the guy he appointed did, and Walker had approved of it. Walker also testified that he still thinks Lee made the right decision.

Walker explained that the union company had just taken over a nonunion job that was in a mess; and, they needed the job to go out there. They needed the initially referred men to act like professionals on that job; they needed them to not miss a stroke; they needed young people to make it happen; and that's why those young guys were picked.

Lee confirmed that he decided on July 24 which people to send out. Lee recalled that he first dispatched all the people that were requested by the company. Shown the daily work (referral) list of July 24 (R. Exh. 1), and those referred that day (G.C. Exh. 2), Lee confirmed that Ellis was requested to work in the raising gang. Notably, Lee considered Ellis a connector. Kent confirmed, in that he identified Ellis (with hire date of August 25, 1983) as an ironworker out of New Orleans Local 58 who had worked for him in other jobs, and who worked as his regular signalman. As such, Ellis talked (signaled) from the top of the bridge to the operator of the floating rig on the water that raised the steel.

Although Ed Cross does not appear on Beasley weekly employment list of July 31, as best Lee could recall, Ellis and Cross were the first key men that Lee had referred out. Notably, Cross is a Local 601 member and a Beasley hand (employee) who regularly travels with Beasley. Lee couldn't recall if Charles E. ''Eddie'' Fair also came in at first, or later, but Lee otherwise confirmed that Fair (on the list with hire date of July 27) was requested, and Fair worked as raising gang foreman to start with. Kent confirmed that Fair, an ironworker out of Birmingham Local 92, had similarly worked for Kent before, was brought in as supervisor foreman on the 4600 that was used to raise the steel, and (later) to load steel (at nearby yard) on a barge for transport back to bridge location for (similar) rig raising of steel and connection. Lee had recollection of another individual who was not on the employment list that he nonetheless recalled he had initially referred at the Company's request, namely Floyd McNeese out of Nashville.

Be that as it may, Lee then initially referred five other individuals on July 24, for reasons stated below. Four were journeymen (and connectors), and one an apprentice. None of

the five referred appeared on the daily list before Brown. The next referral on that job did not occur until August 14.

Kent testified that he knew the age and qualifications of Fair and Ellis, and knew they could do the work. Kent confirmed that the remainder of the employees (referred) were all relatively young men, who were qualified and did the job for him.

Kent more specifically relates that with the men the Union referred he first erected the pieces that CRC had made up (in sections). Then, what CRC had loaded in single pieces, he put up a piece at a time on the south half of the bridge. Next, he loaded other (seemingly) CRC assembled steel at the yard on a barge and brought it up there and finished up the other half of the Bridge. At that point Kent effectively had the ground mess straightened out; and, he then started his yard crew at MacAlloy and, more or less, got his job started rolling in.

(1) Observations of Lee's July 24 referrals to Beasley

Of the five (nonkey) personnel referred, only two, Martin and Bush, appear on the daily work list of July 24. It is undisputed that even they had less chronological eligibility on the list than did Brown. (Brown was the fourth individual to sign the daily out-of-work list for July 24 (U. Exh. 1); Martin was sixth; and Bush, ninth.) The names of the three others referred, namely, Barnette, William Burrows, and Mills do not appear on the July 24 list at all.

Although Barnett's name did not appear on the July 24 list, Brown knew Barnette; and, Brown knew that Barnette was both a qualified connector and younger than Brown. Barnette had worked with Brown before. Brown had Barnette do connecting work, acknowledging that Barnette was a pretty good hand; and conceding that Barnette could do just about anything. Indeed, in the end, Brown has related that Barnette had worked on different jobs with Brown, who at times had Barnette do all phases of connector work.

Brown also knew (the referred) William Burrows, who had worked with Brown before, but it was more in a welding situation and a repair job. David Bush had never worked with (under) Brown as foreman, but Brown thought Bush had worked on a Huber job with him, prior to this (last Huber) job, probably in 1989, though also only on welding work. Brown relates that on jobs Brown worked with them (Burrows and Bush), they had not done connector work. It further appears that Brown didn't know whether Burrows and Bush could do connector work. Brown knew that the three (Barnette, Burrows, and Bush) were each younger than Brown. Though Brown didn't know Barnette's or Burrows' exact age, Brown knew that (William) Burrows was really young, probably in his mid to late twenties. Brown didn't personally know Martin and Mills at all.

Shown the out-of-work list, Brown otherwise acknowledged that there were other people on the list besides Brown who didn't get referred to the Beasley job that day. Indeed, there were three who signed the list even before Brown, none of whom were immediately sent out to the job. Brown didn't know whether any of them could do connector work. Brown knew Steam, who was the first to sign the July 24 list, and had checked himself as qualified under S, was assigned as the steward, but referred out there *at a later date*. Brown didn't know whether (Z) Burrows, who had signed in second position before him and checked all columns, and Bill Luther, who had also signed before Brown in third position, but had not checked any column (or even if any of the 10 of 12 others who signed after Brown and were not referred out) were passed over. Brown explained he didn't know whether it was their own choice not to go, or what.

Walker testified generally that the three individuals who had a superior position on the list to Brown, were not referred to the Beasley job for similar reasons, asserting relatedly that each of the three names above Brown were as qualified as Brown, though (only) the first two (Steam and Z. Burrows) had placed a check in the S column that could indicate connector.

Walker recalled specifically, and Lee corroborated that they had wanted to send Steam out initially as Local 601's steward representative for the job (on Lee's recommendation), but felt they couldn't send him until 1–2 weeks later, because Steam, though checking Structural, wasn't a connector.

In that very regard, though Steam had signed in first on July 24, and, unlike in the case of Brown, there appears a check in the Structural column that includes connector, Lee has testified unequivocally that Steam was not a connector, and that he did not want to be considered a connector. Similarly, Lee identified Z. Burrows, in second position and who had also checked the S column, as approaching retirement age. Lee testified specifically, and without contradiction, that he felt Z. Burrows would have been upset with Lee if Lee had referred him to the Beasley job as a connector. Walker personally knew the third, Luther, was in his late fifties or was even 60; and, that Luther had emphysema real bad, and, couldn't be sent. (Brown confirmed (Z) Burrows as probably about his age; and, Luther, probably 7 years older than Brown, which Lee confirmed.) Walker didn't know the particulars of most of the others.

Of those names appearing on the July 24 list after Brown, there were only three others (David Bush, Cleeve Cooper, and Gene McMahan) who had placed a check in the S column on the July 24 out-of-work list. Lee referred Bush, but not Cooper or McMahan. Lee explained that Cooper was also approaching retirement age; and, that McMahan, a young man who was a qualified connector, whom Lee thought would want the connector job at Beasley, didn't want it.

In general summary otherwise, Lee has essentially testified (without any apparent contradiction, and in any event credibly) that the others (on the July 24 list) were passed over either because Lee knew they were not connectors; or they had told Lee they didn't want to connect anymore; or because (at least) one, David McCracken, who was a connector, but hadn't checked in that day in column S (or otherwise as a connector) had said he didn't want to go to the Beasley job as a connector. Under hiring hall practice, although each day brought a new out-of-work list, an employee declining a referral did not lose his position on that (or earlier) list, e.g., for referral to the Beasley job on ironworker work other than connecting, when it became available. Lee has confirmed relatedly that any number of those on the list(s) not initially sent were later sent to jobs that they felt they could do.

Lee testified, again without apparent contradiction that the names of those referred out to the job, which did not appear on the July 24 list, would have appeared on a prior list that

he used after exhausting the names on the list of July 24. Brown didn't remember if he had personally indicated on the July 24 daily out-of-work list that he was qualified for connector work. In point of fact, Brown had not by check, nor even (arguably) by drawn line, indicated on the July 24 list that he was qualified for connector work. The General Counsel would then have it observed that Martin, who (like Brown), was on the July 24 list and who had not checked any qualification column (unlike Brown) was referred, a consideration that is to be addressed further below. In passing however, I note the above uncontested testimony of Lee that McCracken, who also hadn't checked off the S column that day, and who was also known by Lee to be a connector, when asked, specifically told Lee he didn't want to be referred to the Beasley job as a connector.

In passing I otherwise presently note and find that although Brown appears to have specifically questioned the Union's referral of Mills because Mills name was not on the list Brown acknowledged that he did not know Mills; and Lee's credible testimony of record reveals convincingly that Mills at the time was an apprentice, who was not required to sign that list.

The nonreferral of Brown as a connector presently aside, it appears uncontested of record from credited Lee testimony, that the names of Barnette (whom Brown personally knew to be a capable connector, above) and William Burrows appeared on an earlier list and were reached by Lee as a qualified connector for referral upon Lee's exhaustion of the July 24 list, with (at best) only the situation of the last name on the July 24 list, that of Okie Wells, that would appear otherwise not to have been definitively addressed.

(2) The issues of Brown's and others' connector qualifications

On July 26 (Monday) Brown went to the union hall and talked to Walker in his office about the Beasley referral. Brown asked Walker why Brown wasn't referred out to the Beasley job. Brown relates Walker told Brown that they called for five connectors; and, Walker thought Brown was too old to be a connector on that job. Brown acknowledged that at the time the Beasley job came in and/or when the calls were made on July 24, Brown didn't know that Beasley was requesting (all) connectors; and he probably first learned of that during his conversation with Walker when Brown asked why he wasn't referred.

Lee referred young men who were connectors whom Kent confirms did the job. In material time, Brown was 56, claimed to be in perfect condition, and asserts he thought he was able to do all ironworker work, including connector work. Brown asserts that he thought Lee knew Brown could do connector work.

Lee acknowledged that he passed over Brown, and that he did not ask Brown before he did so. However, Lee testified that it was not because Brown hadn't checked in under the structural connector column, but rather, that he passed over Brown because, based on Lee's experience, Lee didn't consider that Brown had ever been a connector. Thus, Lee has testified that he has known Brown for better than 20 years; that Lee had never known Brown to do any connecting work; that Brown had never worked on any connector jobs where Lee had referred him; and, that to his knowledge, Brown had never worked on any connector jobs out of this Union. There was much testimony then elicited as to when and where Brown had worked as a connector, not without some confusion, particularly in regard to jobs on which there was connecting work, though Brown did no connecting work on the job or such jobs where Brown was a raising gang foreman (or as a general foreman pushed a raising gang), as opposed to general foreman or miscellaneous foreman (where he did not); and, what Lee *reasonably* knew thereof.

(3) Brown's connector experience; and Lee's reasonable knowledge

Initially Brown recalled that the last big job that Brown worked on as a full-time connector was in 1971, on a powerhouse in Mastonia on a job out of Savannah, Georgia (Local 709). Brown also then related generally that he had done some other small connector jobs for a day or two. Brown then recalled, again (apparently) both out of Savannah: (a) working on a six-story chemical plant for Porter-Huggins in probably 1975–1976, though Brown has later recalled that he had worked on the job (seemingly, in all) probably for several weeks to its completion; and (b) in the seventies, had worked as a connector on a powerhouse for Georgia Power and Light at Baxter, Georgia. However, Brown then later additionally recalled that in the early seventies he had left the above full time Mastonia connecting job, to go to work as a connector for American Bridge Co., on a bridge being constructed between Philadelphia, Pennsylvania, and an (unnamed town in New Jersey), where Brown related he had worked on the bridge for 2–3 months, and as a connector (albeit somewhat ambiguously as to time worked as a connector).

Nonetheless, Brown has testified that in 1989, though he was 56 years of age, he thought he was able to do connector work; and, Brown believed that Lee, whom Brown had worked with, and known for 20 years, knew Brown did connector work. Indeed Brown then asserted that the last time he was referred by Lee out to a connector job where he did connector work was just a month ago, on an 1800-foot TV tower for Structural Steel Technology (SST), where Brown asserts he put a wave guide on Channel 24.

Brown impressed me as being a generally credible witness. However, in this instance, Brown's later testimony proved to be not very convincing. Brown initially related, e.g., that he worked on that (recent) job for a couple of weeks, though on cross-examination Brown less surely recounted he was there the better part of 2 weeks, 6–10 days, then adding he was not sure. Brown acknowledged that Lee had referred him out to that job as a union steward.

Brown otherwise related generally that some of the connector work on that job was on the top and some on the ground. However, Brown then appeared at best confused to point of not recalling (if not both evasive and inconsistent in responses) when Brown was directly questioned about the amount of connector work that Brown had actually done on that job. Apart from the strained or imprecise recollection of what connector work he had purportedly only recently done on this job, Brown initially related that for at least a week of it (the job) he was on the ground, only to later assert he had worked mostly in the air. I did not, and do not in review, find this testimony of Brown's claim of a recent referral to a connecting job and doing connector work on it, persuasive; especially in the face of Lee's more consistent, cred-

ible testimony that it was not a connector job, and other factors considered below.

In confirming that he has known Brown for better than 20 years, in regard to Brown's qualification to do any performance of connector work, Lee has testified in contrast, severally, that: Lee has never known Brown to do any connector work; to Lee's knowledge, Brown had never worked on any connector jobs (in context, as a connector) out of this union; Lee had never heard of Brown working as a connector in this or any other area; and Lee had referred Brown to none (as a connector).

In regard specifically to Lee's referral of Brown to the TV tower job, Lee testified specifically that the recent SST job was not a connector job; and that on the three occasions that Lee was on that job conducting business Brown was always on the ground. Lee related of that job, and without any subsequent controversion, that he received a call from Brown, requesting that he (Brown) be replaced on the job as steward. Lee recounted that Brown had told him on that occasion that a pre-existing foot injury was giving him some problems; that they (seemingly, SST) had to ask him to go in and do a little work; and Brown wasn't able to do that, as he didn't trust that foot.

Lee otherwise testified that he had worked on several jobs with Brown that required connector work. Indeed, Lee recalled working as a apprentice in 1969 on a C/A–5 airplane hanger at an Air Force base where Brown was general foreman. However, Lee testified that it was not Brown's responsibility on that job to do any connector work; and, that if a problem came up, that Brown would not necessarily have to go up; and relatedly, Lee didn't recall Brown climbing any rigging on that job.

Lee then recalled (volunteered) an occasion that Lee had worked more recently for Sound Steel Erectors (SSE) in 1984 as a connector in the construction of certain cranes for Camron Corp. (CC), where Lee (first) related Brown was the general foreman or foreman. However (again), Lee testified that it was not Brown's job (as whatever foreman) to do any connecting on that job. Lee added generally that there were still more jobs on which he had worked with Brown, but on none did Brown do connecting.

While sequence and identification of jobs worked by Brown in the period of 1980–1984 are anything but clear and precise in record reference, nonetheless, it appears that in rebuttal Brown had then recalled and related that Brown had left the Papco job in April 1980 for the CC container crane job, which (if not including another earlier crane job) involved SSE construction of 10 cranes. In any event Brown then recalled that later in 1982–1983, after SSE had come in, Brown (seemingly) asserted he had worked on a raising gang for SSE until the job finished. Brown further related that in the fall of 1983 and through mid-1984 he worked (I find) as general foreman for SSE in construction of a 500-ton crane in (apparently) the (Charleston) navy yard. (Though on cross-examination Brown, on one occasion asserted he was a raising gang foreman in 1984, on direct Brown had stated, and on further cross-examination confirmed that he was a general foreman for SSE in 1984.) Brown also confirmed that Lee had worked with Brown on the navy yard crane job, and on earlier crane jobs.

Brown otherwise asserts generally that he has worked raising gangs before. In that regard, Brown testified that the majority of a raising gang foreman's work is on the ground, and that it involves getting the iron laid out and sending it to the top. However, Brown also relates that occasionally the holes are off, or the iron won't fit. According to Brown's view of the raising gang foreman's responsibility, and in any event the way Brown has testified that he always worked such a job, it is necessary for the foreman to go to the top to see what the problem is (especially when the connector men get high to the point they can't be heard on the ground).

Brown testified specifically that in 1984, but as (I have found) a general foreman, there were numerous times that he had to go high to correct problems (on the navy yard crane job), e.g., trouble with the pins; and, that he had climbed steel (initially to do so) though he had also used the elevators and stairs when constructed and available.

Lee subsequently testified in rebuttal that there were two different SSE jobs, namely, the navy yard job and the earlier crane jobs. Lee confirmed that on the SSE navy yard job, Brown (as general foreman) did push the raising gang. However, Lee testified in apparent rebuttal of any claim of Brown to the contrary being advanced, that on the other (earlier) SSE crane jobs Brown was a miscellaneous foreman, and as such did not have responsibility to push the raising gang. I credit Lee's recollections generally in these matters; and, I further find that if Brown had done any earlier pushing of connector work on cranes it was reasonably unknown to Lee.

On rebuttal cross-examination Brown acknowledged that he had never worked on connector work on a job where Lee had (also) worked; and, that on occasions when Brown and Lee had worked the same job, Brown had always worked in supervision. Equally significantly, Brown acknowledged on cross-examination that as a general foreman (after viewing a problem) he then had someone else do the required connecting work.

Weight of the above and other similar evidence of record warrants finding I now make that on the record before me Brown had not worked as a regular full-time connector for well over 15 years; and then not out of his own local, nor within the knowledge of Lee. Moreover, Brown had not worked in supervision involving connector work for about 5 years, and even then Brown was not involved in doing actual connector work himself.

Brown later acknowledged, and in light of the above findings thus only the more revealingly, that at the time of the Union's July 24 referrals to Beasley he didn't understand or believe the Beasley call was for five or for all connectors on this job. Relatedly, Brown admitted that he probably did say something to Walker to the effect that you didn't start a job off with five connectors and there had to be others (in context, work other than actual connecting work).

Moreover, Brown has related that he believed his specific statement made to Walker on that occasion was that calling for five connectors was just a Beasley gimmick or ruse to get around hiring older people, to get around to hire who they wanted on the job, or to get certain people (out) on the job. (The applicable master agreement provides the parties will not discriminate against workers on the basis of age.) Though not recalling he had actually said it, Brown in the end testified no less significantly that he *believed* some of the Beasley work didn't involve being connectors, asserting that there were people working on the ground, on the barge, and what have you.

Walker's version of their conversation on July 26 is that when Brown had asked Walker why they were not sending him to that job, Walker had told Brown, ''We'll get you out there, hang tight.'' Walker also told Brown, You know they're calling for all connectors until they get this thing straightened out''; and that Walker then jokingly had said to Brown ''you're just like myself, you're getting too old to connect and you know that.'' Walker repeated, ''Hang tight; and we'll get you out there.'' Walker also told Brown, ''The next [time] they call, you'll be in that crew''; and, Walker has testified that Brown *was* offered the job on the very next call, on August 14, but Brown didn't accept the referral.

(4) The July 26 incident involving fatalities

On the same day, July 26, there was an accident on or near the bridge. Three men who worked for CRC went down through apparently one of the piers. Two were killed and a third was (at least) injured seriously. (Lee confirmed relatedly the two men who were killed and one who was injured were working for CRC within several hundred yards of where Beasley's men were working, but not on the bridge. Lee knew they were not ironworkers, and assumed that they were carpenters, who were working in the air on forms, pouring concrete and placing reinforcing bars.)

The news media promptly picked the incident up, and there was an ongoing daily coverage of it on television and in the newspapers. Brown recalled there was also coverage about safety violations and certain investigations that were going on, including later on the circumstances under which one inspector had mysteriously disappeared.

c. *Brown's subsequent refusals of referrals to the Beasley bridge job*

(1) Related contentions

The General Counsel has understandably conceded that the theory of a prior union responsibility with regard to the alleged improper nonreferral to the Beasley jobsite on July 24 ends with Brown's rejection of Respondent Union's two referrals (below) made on August 14 and 15, because at that point Brown had clearly rejected a referral to the job (as a bolter). Nonetheless, the General Counsel would have it observed that in the interim and before the Union's offered referral on August 14, namely, on August 4, Brown had filed the instant charge in Case 11–CB–1793 alleging that the Union had unlawfully failed to refer him to the Beasley job.

TheUnion primarily defends the earlier nonreferral of Brown on the basis that Beasley needed, wanted, and had called for (only) connectors to begin this job; and, Brown was not qualified to do the indicated connector work that was to be immediately required of every man initially referred to that job. Union has additionally asserted that Brown would have as immediately lost interest in a referral to the Beasley job, essentially by his own admission, from the time when the troubled job gained additional notoriety momentum from the untimely deaths of construction workers first publicly announced about midday July 26.

Contrary to the Union's contention that Brown wouldn't have taken a referral from almost the start, Brown asserts he didn't become frightened for his safety right after the accident happened, but only (sometime) in the days after that when it came up that an involved highway inspector was missing under suspicious circumstances; and, when he had observed others (ironworkers) back in the union hall talking about how dangerous the job was, and saying that they didn't care for safety, including Barnette. Barnette, who had worked under Brown before, had been referred to the Beasley job early, but only stayed on the job a day or two.

In this regard I presently credit Brown that at least in general, he would have taken a referral on July 24, though I hasten to add I do not wholly credit him otherwise as to his asserted reasons for later being afraid for his own safety on the Beasley job in explanation of his repeatedly refusing referrals.

(2) The Union's referrals of Brown; and Brown's refusals

It was unquestionably after Brown had filed his charge, that the Union offered Brown a referral to the Beasley bridge job (notably) twice in mid-August (consistently, as a bolter, not as a connector). Otherwise (at first) Brown didn't think the Union had offered him any referral after July 24 until August 14, though Brown recalled generally that there were occasions during August that the Union had dispatched Brown to Huber.

Walker first called Brown on a referral to Beasley on August 14, at about 11:10 a.m. Brown had been at the union hall earlier that morning. Brown had gone to the hall and signed the out-of-work list for that day; and, he probably stayed around the hall till close to 9 a.m., waiting on a job call. Brown then went home.

It is undisputed that the next Beasley call for men was on or about August 14. Walker testified relatedly that the Local had received a Beasley call at about 9 or 10 a.m. for some men for the next day. Walker then called Brown, and he told Brown they had a call for bolt up people to go to work in the morning; and, for Brown to come to the hall, and they would refer him out. Candidly acknowledging that Brown had sounded like Walker had awakened him, Walker otherwise relates that Brown said, ''No, I've changed my mind, and I don't think I want to go out there.'' Walker's version is that Walker then asked Brown, ''Are you sure because it's going to be a good long job. Brown said, no, I don't want it.''

Brown's version of the conversation is essentially compatible with that of Walker. Brown recounts that when he arrived home, he went to sleep on the couch. Brown asserts he wasn't feeling well, explaining, he thought it was because of some seafood he ate the night before. Be that as it may, Brown recounts (as Walker has effectively conceded) he was asleep on the couch when Walker called and woke him up. Brown acknowledged that he turned down a first referrral to the Beasley jobsite that day. In refusing the referral, Brown told Walker that he didn't feel well, though Brown then acknowledged the late morning referral was probably for the following day. Brown states he was confused when he answered the phone.

Any issue of confusion as to Brown's stated reason for declining referral on this occasion aside, it is clear and undisputed that on August 14 Walker had first offered Brown a referral on the very next Beasley call for men (bolters) to the Beasley job, which Brown for whatever reason of his own, refused, see related discussion below on the interim events.

Moreover, Lee called Brown the very next day, on August 15. Lee (again) offered Brown a referral to Beasley. Though Brown wasn't home at the time, Brown confirmed remembrance that Lee had called sometime during the morning of the next day, and that his wife took the message. It is undisputed that Brown turned down Lee's (the Union's second) referral of Brown to the Beasley job made on August 15.

Brown asserts that it was probably on August 15 that he decided the job was too unsafe for him. Whether August 14 or 15, The General Counsel continues to relatedly contend that until then the Union had violated the Act in its initial failure to refer Brown earlier on July 24, 1989, as at that time Brown would have accepted referral to the Beasley bridge job. While the General Counsel has declined to concede Lee had not passed over Brown because of some contended hostility, General Counsel otherwise acknowledged that he did not have any specific instance of (Lee) hostility that he would point to.

Nothing more had happened between August 14 and 15 to make Brown believe the job was unsafe. Though Brown asserts he discussed the job with his wife the night before (in the interim), Brown admits that he had reservations about the job even before he had talked to his wife, on the evening of August 14.

Finally, Lee has testified that he continued to offer Brown referrals to the Beasley job, as many as 8–10 overall, including again on August 18 and 28, none of which Brown accepted. Lee thus testified relatedly that on different occasions Brown gave Lee different reasons for refusing Lee's referrals to the Beasley jobsite; namely, that he was ill and didn't feel good; that he had heard too much about the job and he was afraid of the job; that he was waiting on another job that he had heard about and wouldn't be interested in it; and that several times Brown just said, ''I don't want that job, you know I don't.''

(3) Other considerations

Brown related that somebody had given his phone number to a State senator in Charleston who had private investigators investigating the matter. Brown relates that investigators called Brown on several different occasions about stuff going on that bridge. Brown told them he didn't know anything. Brown relates that with all of the above going on he was actually afraid to go out on that job at this time, and stated explicitly that the main reason he rejected the job was because he was feared for his own safety for going on the job.

At hearing, Brown related that he did not believe that there was foul play on the part of the Union in connection with the Beasley job in any way. Brown also affirmed at hearing that nobody on television, press, his friends, his wife, or anyone else, had ever indicated to him that foul play on the part of the Union was suspected in connection with the Beasley job. In contrast, Union established that in an otherwise typed affidavit given on August 28 during the investigation of this matter, Brown had initialed an underlined handwritten statement that explicitly stated, ''I was called on August 15, 1989, by Business Manager Phillip Lee with a referral to that job. I rejected the referral not because I was sick, but because of the allegations of foul play by the Union; people turning up missing and the ongoing FBI investigation.''

At that point Brown acknowledged, the apparently he did tell the Labor Board in that statement that he had rejected the job in part because of allegations of foul play by the Union, but added, ''I wasn't aware of that; I don't think that was the intent; and, I probably wasn't paying enough attention about what was written down there about the Union.'' I credit the related and mutually consistent and corroborative testimony of Walker and Kent, that the reported injury/deaths had occurred on adjoining areas of the bridge job that were unconnected to the Beasley bridge work, Beasley work force, or the Union.

Brown has otherwise said at the hearing that after he had filed the charge against the Local on August 4, knowing that International and Local brought the contract (Beasley work) in here, Brown figured that he might be putting himself in jeopardy going out there on that job in view of having filed the charge and everything.

a. *Age considerations*

Brown acknowledged (generally) that usually younger ironworkers only want to work on top. Indeed, Brown has as much as conceded a (Walker) stated practice in the industry to use younger ironworkers up high or on top. Though Brown has continued to reserve that older ironworkers could do connector work too, it is clear enough to me of record that it is a practice that younger ironworkers regularly do high connecting work, and thus (apart from raising and/or nonconnecting bolt-up work) the work materially applicable initially to this bridge connector work. Brown confirmed generally, ''That's all them young fellows want to do; I mean they like the excitement and want to get up there.''

While Brown continued the claim Brown had been on jobs where both older men and younger fellows worked as connectors, Brown broke off in still further acknowledgement—usually younger fellows that's the only category they'll check. They like that excitement of getting the thing going. When later questioned specifically as to awareness of any ironworkers of his age working on the connecting work on that bridge, Brown stated only, that he didn't even know who's out there now, he didn't know any of them.

Lee expressed having trouble with the use of the term practice, but Lee then otherwise testified in general, that in connectors you look for someone that is able to do a hard, dangerous, and physical job, hopefully with enough experience that they won't hurt themselves, or some one below them. Lee also related that in the 9 months that he has been business manager, he hadn't sent out any connector that was over his thirties. Though Brown maintained older ironworkers do connector work, and Lee confirmed that you may see a connector in his late forties or early fifties, Lee also testified that is the one in a hundred exception. Lee related that the last time he personally worked as a connector was in 1986. Lee has otherwise more specifically testified that Brown and certain others were not passed over because of their age as such, but because Lee didn't think that they could do the connector work required on the bridge, though age was also unquestionably a factor in that regard.

Analysis, Conclusions, and Findings

1. The Union's failure to refer Brown to Papco's Georgetown jobsite

It is apparent from the evidence above that Walker did make a real and continued local effort to try to get Brown employed on the Papco jobsite, though I also conclude and find only after Walker had already refused to refer Brown in chronological order to the job; and, after Walker's conversation with Brown, in which Brown had given Walker full reason to question efficacy of the December 22, 1984 letter that had recently been brought to Walker's attention, and, which had formed the basis for Walker's initial failure to refer Brown to the Papco jobsite at Georgetown. While I do not credit Walker's account of an immediate contact of Martin over this matter, primarily because of its apparent incongruity with other more credible evidence of local contact, I do credit Walker that he did make efforts to amicably get Brown on the job.

Thus I credit Walker's subsequent initial phone conversation with Faulk about the subject; Walker's then direction to Lapman to do all he could to get Brown accepted on the job; Walker's own personal visit to the Papco jobsite on April 26, and his related conversation and plea made with Faulk that day; his inclusion of Brown in a substantial referral the same day to a boilermaker job; and Walker's subsequent directions made to Lee to contact Martin. However, in that regard I credit Lee: (a) that the thrust of Walker direct instructions to Lee made as late as in July was *to determine if Martin's intentions were still as they were in the past*, in which efforts, despite repeated attempted contact, Lee continued unsuccessfully; and, (b) that it was after a few weeks or so, that Walker had again called Lee and told him that they had to do something about this.

Moreover, I have credited Lee's account that he had thereafter again tried to reach Martin, and this time left the message with Martin's secretary *that he was going to have to tell us (Union) what he wanted to do*, or Brown would be referred out to the job. I am persuaded that any contact of Martin on the subject made by Walker would have more likely occurred after the report by Lee of his own inability to make contact with Martin, if not after Lee left the latter directed message for Martin.

In any event, I conclude and find that it was likely a consequence of some such recent Walker phone contact with Martin, and Walker's further contact of Lee, that Lee, when eventually contacted by Martin, told Martin *just what Lee had then been instructed to say*, namely, by Walker's efforts to get Brown on the job and by talking to Martin's personnel on the job, ''We realized what Martin's wishes were, but we felt like we were [now] in a position that we needed some clarification.'' The short of it is however, that once again, much after the fact, it was the Union's demand for a new, updated letter that has resulted (again) in a union solicited letter barring Brown from the job and property, this time with the date of August 14, 1989.

It thus bears recalling the latest letter, though succeeding the December 22, 1984 letter, is based on a 1975 fight between Brown and a supervisor that had occurred 14 years earlier, and that apparently had also occurred away from the Employer's jobsite, at the supervisor's house party; and, which had been followed by two periods of interim successful and satisfactory employment, before a previously determined discriminatory failure to refer Brown. In that regard, I further note that despite Lee's report of recent Martin vehemence that his prior letter to bar Brown from the Papco jobsite was one he had intended to be for life, no such assertion or any reference thereto appears in the new letter. Only a bar is stated, as before. The Union's belatedly solicited letter of August 14, 1989, remains as suspect and inefficacious in resolving the instant dispute, as the prior letter of December 22, 1984, was found to be.

Nonetheless, in the light of Walker's earlier apparent good-faith efforts to amicably get Brown back on the Papco job, it is thus not without some degree of reluctance that I have concluded and found that Respondent Local Union 601 must be held responsible for the continued discrimination that I am in the end convinced was effectively practiced against Brown in Walker's failure to refer Brown to the Papco jobsite at Georgetown on April 3, 1989.

Whatever might be the case as to the identity of the Phillips who was sent to the Papco jobsite at Georgetown in November 1984 on an occasion when Brown was found earlier to have been discriminatorily denied such referral, there can be no question that it was Johnny Phillips, as subsequently appointed and then elected business manager of Respondent Local 601, who has been shown on this record to have also harbored intent to actively discriminate against Brown in more recent years. That animus is convincingly evidenced by Business Manager Phillips' (uncontroverted) willing part in keeping the related Board notice to members (naming Brown) up on a union bulletin board in the Union's meeting hall, over Brown's explicit and repeated objections, for well over a year, if not for years beyond any normal required posting period. The only purpose to appear reasonably of record therefor is that Phillips, as the current Local Union's business manager, had continued in that period to discriminatorily intend that those in attendance at the Union hall would be aware that Brown had brought charges successfully before the Board against Respondent Local 601.

Moreover, it then takes on added significance that, at a time when Walker had expressed full intent to send Brown to the Papco jobsite, it was that very same Johnny Phillips: who (a) had first brought to Walker's attention the above letter of December 22, 1984, barring Brown from Papco property though the letter had resulted from McMahon's earlier discriminatorily motivated contact of a high Papco official, and (b) did not bring to Walker's attention the Board's related decision (or court order of enforcement) that necessarily had considered it, and concluded that the December 22, 1984 letter was one wholly ineffectual to serve as a defense to the Union in the alleged and determined discriminatory failure to refer Brown to Papco at that time.

While I am disposed to credit Walker's denial that Phillips had mentioned the Board or court-related decision (at least) initially to him and, to even credit Walker's further denial of ever having personally seen the decisions in Brown's file elsewhere, I have much greater difficulty with any such full acceptance that once being so early apprised by Brown of the existence of such decisions, that Walker did not shortly come to have knowledge of its (their) basic contents, even if he had also unsuccessfully waited some interim period for Brown to bring in his copy.

In any event, Respondent Local 601 cannot now be heard to successfully defend on even credited limited Walker knowledge on the December 22, 1984 letter as initially brought to his attention by Phillips. Phillips was a union agent who is shown on this record to have willingly engaged previously in a continued discrimination against Brown. Whether Phillips officially retained his titled union position at the material time (March 30) or not, he had then unquestionably been retained as union agent for purposes of advising Walker on just such ongoing union matters. To the contrary then, like Brown, I conclude and find that this dispute far more likely had initially arisen because Walker had initially listened to someone who had something against Brown, namely Phillips; and that the conduct of Phillips in that regard involved a renewed use of a previously proven ineffectual solicited company letter, if not one itself tainted because effected by prior union discrimination, below.

Thus, I further conclude and find that by Phillips' act of bringing the December 22, 1984 letter to Walker's attention, that on its face barred Brown from the Papco jobsite, but not the Board's (or court's) related decision and order thereon that had fully considered the circumstances of that letter's issuance, and had necessarily concluded the letter did not absolve the Union's prior determined discriminatory nonreferral of Brown to Papco; and in Walker's reliance thereon, and subsequently proceeding on that basis to (again) not refer Brown to Papco employment on April 3, Respondent Local 601, by the conduct of its above agents has effectively (once again) discriminated against Brown in violation of Section 8(b)(1)(A) and (2) of the Act.

Just as the December 22, 1984 letter had produced no salutary effect, or served as no defense to the Local's prior discriminatory failure to refer Brown to the Papco jobsite, neither can it be reasonably viewed presently to do so some 5 years later. Furthermore, in my view, the Board has necessarily already held in substance and effect, if not explicitly, that the production of the December 22, 1984 letter was one inextricably tainted by Union Business Manager McMahon's earlier contact of the higher Papco officials, because of McMahon's heretofore clearly determined discriminatory purpose in contacting the high Papco official before the letter's issuance.

Moreover, and contrary to Respondent Union's present contention in that regard, Local 601 cannot now be heard to raise for the first time a contrary claim that the December 22, 1984 letter had some continued vitality on its own or because the letter was not previously ordered expunged, that it could be revived and safely used to support future refusal of the Local Union to refer Brown to Papco, e.g., once Union Business Manager McMahon, whose discriminatory contact the Employer had pursued its issuance, had left.

The same considerations can as surely then serve as no offset to the additional circumstance that Phillips, a former brother-in-law of the same McMahon, has been evidenced, while serving as appointed and (later) elected business manager of Local 601, to have now in his own right continued to discriminate against Brown in an extended posting period of related notices; or, discount the fact that Phillips was also the very one to bring the letter to the attention of Walker, but not any of the Board and court decisions from which it is made clear the letter was an ineffectual base on which the Union could even at that time refuse to refer Brown. There can be no question that Phillips knew of the Board's prior decision (and the court's order) that had resulted in the posting of the notices to members that Phillips in his official capacity had kept up beyond normal posting period and over repeated objections of Brown.

It is no answer then for the Union to relatedly observe the fact the letter was not ordered expunged and to then seek to singularly rely on the good faith of Walker, where Phillips, who had continued willingly to discriminate against Brown, had brought it alone to Walker's attention and occasioned and urged Walker to initially proceed on it alone, which Walker then did. The resulting discriminatory effect on Brown in consequence is clear. Thus, Respondent Local 601, by the conduct of its agents Phillips and Walker, has under all the circumstances shown presented herein, in substance and effect continued to make discriminatory use of the December 22, 1984 letter that was initially solicited by the Union out of a discriminatory motive against Brown. As there is no charge or allegation herein brought against the Employer, I need not address the additional effect, if any, of Phillips part, as then designated supervisor of Papco for hire, in the presently determined discrimination that was practiced against Brown.

However, I do note in that regard the probable considerable concern that was subsequently raised in Walker, as revealed by Walker's concession of Phillips' expressed view that a Brown referral to Papco was likely to cause a big problem on the Papco jobsite; especially after Walker's conversation with Brown on April 5 that had (at least) served reasonable notice on Walker at that time that the very letter on which Phillips had caused him to recently rely, may have been one substantially undercut by a subsequent Board (or court) decision. Thus, even if Walker remained unknowing of Phillips' part in recent discriminatory posting of notices, Walker was fully aware of Phillips recently expressed view that a referral of Brown to Papco would cause a lot of problems on the job, as well as the fact that Phillips was by then Papco's designated supervisor on the job. The degree of Walker's likely concern is then only rendered the more significant, with Walker's additional acknowledgment that he knew some Local Union members did not want Walker there to begin with, which no doubt would have included elected and now removed Business Manager Phillips.

Finally, in regard to this new Papco jobsite that Walker (and the other unions) had obtained only through negotiation of a special wage concessionary project agreement in order to provide needed job opportunities for employment to members of his (and other building trade) union I additionally have no doubt Walker was strongly motivated and personally committed to have that project run smoothly. While I believe, on the weight of evidence presented before me, that Walker subsequently tried to obtain an accommodation for an amicable return of Brown to the Papco jobsite (as I have found) on an ever advancing higher level that circumstance does not justify or exonerate the Union for its agents' earlier discriminatory nonreferral of Brown to the Papco jobsite, as has been determined above.

It is therefore concluded and found that by the acts of former Business Manager Phillips, who has otherwise been established to have harbored animus against Brown in material times, in bringing the union solicited letter of December 22, 1984, to Walker's attention, at a time when Walker had

otherwise planned to refer Brown to Papco's Georgetown jobsite, and by Phillips' telling Walker at the time only that a referral of Brown would cause big problems on the job because of the Papco letter of December 22, 1984, that stated on its face it barred Brown from the property, without also informing Walker of the related Board (or court) decision in which the origin and content of the letter was fully considered, and despite its issuance, the Local Union there found to have discriminatorily failed to refer Brown to the Papco jobsite; and by Walker's consequent reliance on the letter, and his related refusal to refer Brown to Papco initially on or about April 3, 1989, Respondent Local 601 has continued to discriminate against Brown in violation of Section 8(b)(1)(A) and (2) of the Act, as the complaint alleges, and the General Counsel has contended.

2. The Union's failure to refer Brown to the Beasley bridge job

Brown has centrally testified that he can do all ironworker's work and that if Brown goes on other jobs out of his jurisdiction, he is expected to go where the work is, regardless of the heights (involved) or what it (the job) is. However, Brown concedes generally that like most ironworkers he is more proficient at certain ironworker work than other such work. More materially, Brown's testimony has otherwise revealed essentially his own basic agreement with Walker central observation that connecting work is a young man's game, in Brown's own acknowledgment that younger ironworkers always want to do that high connecting work, and that they love the excitement of it, and regularly do the required connecting work on the top to get the job started.

Other Brown testimony has more candidly revealed Brown's real interest in the Beasley job lay not with a referral to do the bridge's high connecting work, but rather Brown's interest rested in his belief there were ground jobs available with the raising gang, to which he had not been referred in order, and which work he felt he could do. Indeed, it is apparent that even when Brown later learned the initial Beasley call was for all connectors, the raising gang ground work was work that Brown still sought to claim as available for his referral, because Brown essentially didn't believe that the Employer needed all connectors at first, as he then thought it was nothing but a ruse to serve other Employer intended purpose, that improperly worked to his disadvantage.

Preliminarily, I presently conclude therefrom, in a basic refinement of the real disputed issues, that only Brown's ability to do the described high connecting work on the top and bottom of the bridge has been centrally joined in issue here, or the reasonableness of Lee's view of his qualification in the classification, though the issue involves resolution of the underlying factual question whether Beasley had actually and properly wanted all first referred ironworkers to be able to go to the top to help do the connecting work there.

The record makes very clear that not joined in issue is Brown's general ability to do bolt-up work, for that is the work for which he received repeated referrals in August as soon as that full-time work opened up. Nor has Brown's specific interest in, and thus claimed ability to work limitedly on the ground in a raising gang been questioned. It is not the issue. Certainly also not in issue is Brown's ability to perform any of the remaining job related yard work, which on this record is work that is usually reserved for (seemingly) the older ironworkers that have pulled their time.

Neither is Brown's ability to work on connecting jobs as a general or other foreman (pushing) a raising gang (with, or without required ability to go to the top to observe any developed problem in connecting, but without actual required performance of any connecting work) what is here joined in issue. Beasley's Kent had unquestionably already selected and brought in his own key supervisory people to perform those tasks. It is Brown's ability if called on to do the high connecting work with any degree of regularity under the claimed unique circumstances of this job that is in issue, and/or Lee's reasonable belief Brown wasn't qualified as a connector; although the General Counsel does additionally relatedly raise question whether Lee's actions and methods that were utilized in making initial referrals on a required connector basis, have sufficiently followed existing hiring hall rules, procedures, or established practices, or were such as to meet considerations of objectivity that are required of operative hiring hall personnel when they make such referrals.

On the basis of the mutually consistent and corroborative testimony of Walker, Lee, and Beasley's project superintendent, Kent, I credit the above described circumstances which support and warrant conclusion that there was a need for all connectors at first. On this record I find that there was poor management in the initial CRC effort at erection of the steel for the bridge job; that in Kent's view CRC's assembly and location of the iron in sections and pieces had also resulted in a mess on the ground; that on being awarded the subcontract to erect the steel, Kent knew Beasley's initial work force would have to first straighten out the ground mess, which reasonably meant they would have to first raise and connect a lot of the already prepared iron on the ground.

It is further found that Kent thus knew that the work at first would primarily involve the physically hard and dangerous task of connecting the heavy iron pieces at substantial heights to the top and bottom of the bridge; and Kent reasonably concluded as a matter of efficiency in job recovery, that all the ironworkers that Beasley at first would employ, should be able to go to the top and connect, as often as needed. Resultingly, and any good-faith belief of Brown to the contrary notwithstanding, I further conclude and find that Kent had discussed with the Union Beasley's immediate connector needs to resume the job in orderly fashion; and, to that end, subsequently called the hall requesting the Union to refer all connectors at first, for that reason.

Though Kent recollections of when and how he had asked for all connectors, as General Counsel points out, vacillated somewhat, Kent no less continued to variously recount credibly his actual need and requests made of the Union that the ironworkers referred at first best be connectors, or would have to be connectors; and, that the Union knew he needed the connectors at first, because (they knew) that was primarily what had to be done first. Moreover, I credit consistent and corroborative testimony of Walker that in their meeting, Kent had told Walker that he wanted five connectors; and, I credit Lee's like and confirming testimony that Kent in his first call had specifically called for all connectors; and, that Kent had explained to Lee that he had to clean up behind CRC as his reason for doing so. I credit Lee that he

had referred all connectors as requested by the Company. (Dispatch of the apprentice appears on this record covered by other agreement.) In any event, I further credit Kent that the men that the Union referred did the job for him, albeit apparently (at least) one (Barnette) left the bridge job shortly after referral, for perceived job safety reasons.

In general, the record reveals that all ironworkers do not always do all ironworkers' work, and/or do not do some ironworkers' work as well as others. I am also persuaded on this record that some ironworkers' work, e.g., connector work and particularly bridge connector work, material herein, is (at least) generally performed in a pragmatic practice, by younger ironworkers.

Certainly a central factor for initial discernment is whether under that guise the Union has in fact discriminated against Brown, *Plumbers Local 136 (Shaw Co.)*, 280 NLRB 847 fn. 1, 861 (1986); though specific evidence of discriminatory motivation toward an alleged discriminatee is not a prerequisite for establishing a violation, e.g., where a business agent uses unfettered or unbridled discretion in departing from a contract's provided objective criteria, *Plumbers Local 619 (Bechtel Power)*, 268 NLRB 766 (1984); *Painters Local 1178*, 265 NLRB 1341 (1982). Here, legality of comparatively recent hiring hall changes instituted on May 23 are not in issue. The changes in the hiring hall system remained essentially compatible with contractually authorized use of specialized classifications, and individually declared qualification thereunder as objective criteria for the running of the referral system. An operative business manager is not precluded from having and using personal knowledge thereof, nondiscriminatorily, *Laborers Local 1334 (Western Sign)*, 281 NLRB 185, 196–197 (1986). It is no advance of alleged unlawful act to assert such practice may lead to abuse, if the evidence presented does not prove actual unlawful abuse, *Morrison-Knudsen Co.*, 291 NLRB 250 (1988).

Under recently established hiring hall rules and procedures, an ironworker was directed to indicate his (presumably contractual) recent work (time and classification) qualifications on the daily out-of-work list then in use. At this time (at least in practice) an ironworker on registering did not lose his position on the out-of-work lists by refusing a job referral. Lee has testified that he used the daily out-of-work list for July 24, and only upon exhausting it, went on, in accordance with established procedure, to use the last prior out-of-work list (as necessary) in making up the July 24 referrals. Contrary to the General Counsel's broad urging, I presently conclude and find that Lee has essentially followed the recently established hiring hall rules and procedures, including the practices related to the procedures under which applicants for employment were directed to sign a daily out-of-work list and, if they qualified, identify themselves as qualified in certain areas, e.g., Structural, which, also under established practice, could include refined claim of connector qualification, though Lee has also followed a practice of acting on what he otherwise knew of an applicant's qualifications and/or wishes in regard to connector work.

On this record, Lee is not shown to have acted disparately in referring qualified connectors. Thus, Lee acted (I find) reasonably and not arbitrarily in referring Martin whom Lee knew was a qualified connector, though Martin had not signed the daily list that day expressly as a connector; and, Lee acted reasonably as well in asking McCracken whom he knew was a qualified connector, because McCracken also had not registered as a connector that day. Moreover, Lee acted reasonably in not referring McCracken, because McCracken, on being asked by Lee about a referral to the job as a connector, had then told Lee that he did not want to be referred to the Beasley bridge job as a connector.

In general, there is no convincing evidence presented otherwise that Lee has misrepresented the nonqualification and/or stated wishes not to be considered a connector of any of those (whether appearing before or after Brown on the out-of-work list) whom Lee has reported had told him, or whom he had knowledge were not connectors or were no longer interested in referral as a connector to that or any job, e.g., because reaching retirement age; or just simply didn't wish to be referred to the Beasley job as a connector.

The remaining question then is whether Lee has acted reasonably in not referring Brown to the bridge job that Lee knew would involve regular performance of (at least) some connecting work on top, especially without having asked Brown, as he did some others he knew were connectors; or, whether Lee has acted in Brown instance, disparately and discriminatorily. There is simply no evidence appearing of record to support the conclusion that Lee has ever discriminated against Brown, certainly not in prior Brown dissident years when Lee was called as a government witness to give testimony against the Union; and, in regard to a matter of Lee harboring animus against Brown, not only is the record void of any suggestion thereof, animus on the part of Lee to Brown on this record is substantially contraindicated.

Under all of the above determined circumstances, given then the additional circumstances shown of Brown's nonperformance of connector work full time for 15 years, and (at best) limited and not very recent performance of connector work otherwise; and Brown performance of actual connector work shown never accomplished within Lee's 20-year knowledge of Brown working within or without Local 601's jurisdiction; and given the traditional performance of major or substantial connecting work as usually performed by younger ironworkers (as here), coupled with Brown's age being (at least) generally known to Lee and Brown's own failure to designate himself as a connector that day, I conclude and find in the end that Lee acted reasonably and lawfully.

Thus Respondent Local 601 has met any burden the Union had of showing that there was in fact no substantial deviation from the procedures and practices existing under the comparatively recently established hiring hall rules under the contract; or, if it is to be viewed there was some deviation, the deviation itself was neither discriminatorily motivated or shown exercised in breach of any duty of fair representation, because Lee (at the very least) is shown to have at all times acted reasonably, in good faith, and neither arbitrarily, nor disparately towards Brown in not initially referring Brown on July 24 to the Beasley bridge job as a connector, even though Lee did so without having first asked Brown if he had connector qualifications, cf. *Iron Workers Local 601 (Papco, Inc.)*, 276 NLRB 1273 (1985); and see *Pipe Fitters Local 392 v. NLRB*, 712 F.2d 225 (6th Cir. 1983), cited therein, id. at 1277.

In the latter regard, I credit Lee's testimony that he didn't ask Brown because he didn't feel he needed to; and, under all of the above circumstances, Lee had reasonable basis to

hold the view that Brown was not qualified to do the connecting work that was physically hard and dangerous that Lee reasonably knew was to be regularly required of all members of the raising gang on this particular bridge job. Finally, I note in that regard the significance of Brown's own testimony that reveals his real interest lay in a referral to a ground job that he erroneously viewed would not require high connecting work of everyone. There is no evidence presented that any ironworker working on the ground in the initial raising gang did not regularly go on top to do the connecting work described herein as required.

Accordingly, for all the above reasons, I recommend that the complaint's allegation that Respondent has violated Section 8(b)(1)(A) and (2) of the Act by its failure to refer Brown to the Beasley bridge jobsite on July 24 be dismissed.

CONCLUSIONS OF LAW

1. Papco, Incorporated (Papco), and John F. Beasley Construction Company (Beasley), are each, respectively, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, Local 601 is a labor organization within the meaning of Section 2(5) of the Act.

3. By its agents' failure and refusal to refer James L. Brown to employment with Papco on April 3, 1989, Respondent Local 601 has violated Section 8(b)(1)(A) and (2) of the Act as alleged in the complaint; and, the Respondent Union has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

4. Respondent has not otherwise engaged in unfair labor practices in failing and refusing to refer James L. Brown to employment with Beasley on July 24, 1989, as alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

A broad order has already issued directing that Respondent Union cease and desist from in any other manner restraining or coercing employees or applicants for employment in the exercise of rights guaranteed to them in Section 7. While there may be mitigating factors present in the violation found herein, since this is the third time that Respondent Local 601 has engaged in unlawful conduct against James L. Brown, it has demonstrated a continued proclivity to violate the Act in that respect, and a broad order is again warranted that will specifically take that into account. *Hickmott Foods*, 242 NLRB 1357 (1979).

Having found that Respondent has unlawfully refused to refer Brown to employment with Papco beginning April 3, 1989, it will be recommended that Respondent Local 601 make Brown whole for any loss of earnings suffered by him as a result of Respondent's unlawful failure and refusal to refer Brown to employment with Papco, *Iron Workers Local 601 (Papco, Inc.)*, supra, at 1281; and *Boilermakers Local 27 (Daniel Construction)*, 271 NLRB 1038 fn. 1 (1984). Backpay is to be computed in the manner as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The effect on the amount of backpay due Brown from the Union's failure to refer Brown to the Papco job, if any, of Brown's termination of employment on certain jobs, e.g., the Boilermaker job referral on April 26, or the August Beasley referral rejections, etc. may all await determination in compliance.

Finally, this is the second occasion that a belated union solicited letter from Papco has been found tainted and/or inefficacious to support Respondent Local 601's refusal to refer Brown to Papco. The continuing suspicion and/or taint residing in such union solicited letters under the circumstances determined herein needs to be cleared with some degree of remedial finality. Accordingly, it will be recommended that Respondent Local 601 be now ordered to expunge all union solicited Papco letters purporting on their face to bar Brown from referral to Papco's jobsites and/or premises from the file of James L. Brown, and that it notify Brown in writing when it has done so. It is further recommended that Respondent be ordered to notify Papco in writing that Iron Workers Local 601 has no objection to Papco's employment of James L. Brown in the future; that it has removed all union solicited Papco letters purporting on their face to bar Brown from Papco jobsites and/or premises; and that it will refer Brown in the future to Papco employment, absent receiving an unsolicited letter to the contrary.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, Local 601, Charleston, South Carolina, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Discriminatorily failing and refusing to refer James L. Brown to employment with Papco, Incorporated, or any other employer with whom it has an employment referral system.

(b) In any other manner restraining or coercing James L. Brown or any other employees or applicants for employment in the exercise of rights guaranteed to them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make James L. Brown whole for any loss of earnings that Brown may have sustained because of Respondent's unlawful failure to refer him to employment with Papco on April 3, 1989, by paying Brown a sum equal to what he would have earned absent the unlawful conduct, plus interest, as provided above in the remedy section of this decision.

(b) Expunge all union solicited Papco letters purporting on their face to bar Brown from referral to Papco's jobsites and/or premises from the file of James L. Brown; notify Brown in writing when Respondent has done so; and, also notify Papco in writing that Respondent Iron Workers Local

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

601 has no objection to Papco's employment of James L. Brown in the future; that it has removed all prior union solicited Papco letters barring Brown from Papco jobsites and/or premises; and that it will refer Brown in the future to Papco employment, absent an unsolicited letter of Papco to the Union that requests the contrary.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all records pertaining to employment through its hiring hall, and all records relevant and necessary for compliance with this Order.

(d) Post at its business offices, meeting halls, and dispatch halls in Charleston South Carolina, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''